Access of goods and services to public procurement markets

Amendments adopted by the European Parliament on 15 January 2014 on the proposal for a regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union’s internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries (COM(2012)0124 – C7-0084/2012 – 2012/0060(COD))

(Ordinary legislative procedure: first reading)

Amendment 1
Proposal for a regulation
Title 1

Text proposed by the Commission
Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the access of third-country goods and services to the Union’s internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries

(Text with EEA relevance)

Amendment
Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the access of third-country goods and services to the Union’s internal market in public procurement and concessions and procedures supporting negotiations on access of Union goods and services to the public procurement markets and to the concessions of third countries

(Text with EEA relevance)

Amendment 2
Proposal for a regulation
Citation 3 a (new)

Text proposed by the Commission
Having regard to the revised public procurement directives (2011/0438(COD), 2011/0439(COD) and 2011/0437(COD));

Amendment

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1 This matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0454/2013).
Amendment 3

Proposal for a regulation
Citation 3 b (new)

Text proposed by the Commission

Having regard to the revised Plurilateral Agreement on Government Procurement (GPA);

Amendment 4

Proposal for a regulation
Recital 1

Text proposed by the Commission

(1) Article 21 of the Treaty on European Union provides that the Union is to define and pursue common policies and actions, and work for a high degree of cooperation in all fields in international relations in order, inter alia, to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.

Amendment

(1) Article 21 of the Treaty on European Union provides that the Union is to define and pursue common policies and actions, and work for a high degree of cooperation in all fields in international relations in order, inter alia, to safeguard its values, fundamental interests, security, independence and integrity and to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.

Amendment 86

Proposal for a regulation
Recital 4 a (new)

Text proposed by the Commission

(4a) The revised plurilateral World Trade Organisation (WTO) Agreement on Government Procurement (GPA) provides only for limited market access for Union companies to the public procurement markets of third countries and applies only to a limited number of WTO Members, which are parties to the GPA. The revised GPA was ratified by the Union in December 2013.
Amendment 5

Proposal for a regulation
Recital 5

Text proposed by the Commission

(5) Within the context of the World Trade Organisation and through its bilateral relations the Union advocates an ambitious opening of international public procurement markets of the Union and its trading partners, in a spirit of reciprocity and mutual benefit.

Amendment

(5) Within the context of the World Trade Organisation and through its bilateral relations the Union advocates an ambitious opening of international public procurement and concessions markets of the Union and its trading partners, in a spirit of reciprocity and mutual benefit.

Amendment 6

Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

(5a) Public procurement forms an important part of the Union's gross domestic product and should therefore be used to strengthen the Union's potential for innovation and industrial production. With a view to a sustainable industry policy strategy in the Union, unfair tenders comprising goods and/or services originating outside the Union should therefore be excluded. At the same time, reciprocity and fair conditions for the market access of Union industries should be ensured.

Amendment

(5a) Public procurement forms an important part of the Union’s gross domestic product and should therefore be used to strengthen the Union's potential for innovation and industrial production. With a view to a sustainable industry policy strategy in the Union, unfair tenders comprising goods and/or services originating outside the Union should therefore be excluded. At the same time, reciprocity and fair conditions for the market access of Union industries should be ensured.

Amendment 7

Proposal for a regulation
Recital 5 b (new)

Text proposed by the Commission

(5b) Union trade policy should help to reduce poverty worldwide by promoting improved working conditions, health and safety at work and fundamental rights.

Amendment

(5b) Union trade policy should help to reduce poverty worldwide by promoting improved working conditions, health and safety at work and fundamental rights.
Amendment 8
Proposal for a regulation
Recital 6

(6) Many third countries are reluctant to open their public procurement markets to international competition, or to open those markets further than what they have already done. As a result, Union economic operators face restrictive procurement practices in many of the trading partner of the Union. Those restrictive procurement practices result in the loss of substantial trading opportunities.

Amendment
Proposal for a regulation
Recital 7

(7) Directives 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 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 contain only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 58 and 59 of Directive 2004/17/EC. These provisions however only have a limited scope and due to a lack of guidance they are not much applied by contracting entities.

Amendment
Proposal for a regulation
Recital 7

(7) Directives 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 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 contain only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 58 and 59 of Directive 2004/17/EC. These provisions, however only had a limited scope and due to a lack of guidance they were not much applied by contracting entities, and should therefore be replaced by more concise and applicable provisions.

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Amendment 88

Proposal for a regulation
Recital 7 a (new)

*Text proposed by the Commission*

(7a) Market access for bidders from third countries to Union public procurement markets should be provided in accordance with Directives 2014/.../EU\(^{12}\), 2014/.../EU\(^{13}\) and 2014/.../EU\(^{14}\) of the European Parliament and of the Council;


\(^{13}\) Directive 2014/.../EU of the European Parliament and of the Council of ... on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L ...).


Amendment 9

Proposal for a regulation
Recital 8

*Text proposed by the Commission*

(8) In accordance with Article 207 TFEU the common commercial policy in the field of public procurement is to be based on uniform principles.

Amendment

(8) In accordance with Article 207 TFEU the common commercial policy in the field of public procurement and concessions is to be based on uniform principles.

Amendment 10

Proposal for a regulation
Recital 9

*Text proposed by the Commission*

(9) In the interest of legal certainty for

Amendment

(9) In the interest of legal certainty for
Union and third-country economic operators and contracting authorities/entities, the international market access commitments undertaken by the Union vis-à-vis third countries in the field of public procurement should be reflected in the legal order of the EU, thereby ensuring effective application thereof. The Commission should issue guidance on the application of the existing international market access commitments of the European Union. This guidance should be updated on a regular basis and provide easy to use information.

Amendment 11

Proposal for a regulation
Recital 9 a (new)

Text proposed by the Commission

(9a) The Commission should ensure that it does not fund programmes for which international public contracts are awarded or implemented in a manner inconsistent with the principles laid down in the public procurement directives (2011/0438(COD), 2011/0439(COD) and 2011/0437(COD)).

Amendment 12

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) The objectives of improving the access of EU economic operators to the public procurement markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the European Single Market require that the treatment of third-country goods and services not covered by the international commitments of the Union be harmonised throughout the European Union.

Amendment

(10) The objectives of improving the access of EU economic operators to the public procurement and concessions markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the European Single Market require that the treatment of third-country goods and services not covered by the international commitments of the Union be harmonised throughout the European Union.
Amendment 13
Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) For this purpose rules of origin should be established so that contracting authorities/entities know whether goods and services are covered by the international commitments of the European Union. The origin of a good should be determined in accordance with Article 22 to 26 of Regulation (EC) No 2913/1992 of the European Parliament and of the Council of 12 October 1992 establishing the Community Customs Code. According to this Regulation goods should be considered to be Union goods when they are wholly obtained or produced in the Union. Goods whose production involved one or more third countries should be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture. The origin of a service should be determined on the basis of the origin of the natural or legal person providing it. The guidance referred to in recital 9 should cover the application in practice of the rules of origin.

Amendment

(11) For this purpose rules of origin should be established so that contracting authorities/entities know whether goods and services are covered by the international commitments of the European Union. The origin of a good should be determined in accordance with Articles 59 to 63 of Regulation (EU) No 952/2013 of the European Parliament and of the Council, including the additional provisions to be adopted under Article 65 thereof. According to this Regulation goods should be considered to be Union goods when they are wholly obtained or produced in the Union. Goods whose production involved one or more third countries should be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture. The origin of a service should be determined on the basis of the origin of the natural or legal person providing it. The determination of the origin of a service should be made in line with the principles of the WTO General Agreement on Trade in Services (GATS). The provisions determining the rules of origin of services should prevent the circumvention of restrictions on access to the Union public procurement market through the establishment of "letterbox" companies. The guidance referred to in recital 9 should cover the application in practice of the rules of origin.
Amendments 14 and 89

Proposal for a regulation

Recital 12

_text proposed by the Commission_

(12) The Commission should assess whether to approve that contracting authorities/entities within the meaning of Directives [2004/17/EC, 2004/18/EC and Directive [....] of the European Parliament and the Council of [....] on the award of concession contracts exclude, for contracts with an estimated value equal or above EUR 5,000,000 from procedures for the award of contracts goods and services not covered by the international commitments undertaken by the European Union.

__Amendment__

(12) _In the event that the Commission initiates an external procurement investigation to determine whether a lack of substantial reciprocity can be observed regarding access to the public procurement markets of third countries_, the Commission should assess whether to approve that contracting authorities/entities within the meaning of Directives [2004/17/EC, 2004/18/EC and Directive [....] of the European Parliament and the Council of [....] on the award of concession contracts exclude, for procedures for the award of contracts or concessions with an estimated value equal or above EUR 5,000,000 from procedures for the award of contracts goods and services not covered by the international commitments undertaken by the European Union. _This does not concern procedures for the award of contract goods and services originating in the countries of the European Economic Area as defined by the relevant rules of origin, as well as contract goods and services originating in countries that benefit from the "Everything But Arms" arrangement as listed in Annex IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council¹, as well as contract goods and services originating in developing countries considered to be vulnerable due to a lack of diversification and insufficient integration within the international trading system as defined in Annex VII to Regulation (EU) No 978/2012._

¹ OJ L....

13 OJ L....
Amendments 15 and 90

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) For the sake of transparency, contracting authorities/entities intending to make use of their power in accordance with this Regulation to exclude tenders comprising goods and/or services originating outside the European Union, in which the value of the non-covered goods or services exceeds 50% of the total value of these goods or services from procedures for the award of contracts should inform economic operators thereof in the contract notice published in the Official Journal of the European Union.

Amendment

(13) For the sake of transparency, contracting authorities/entities intending to make use of their power in accordance with this Regulation to exclude tenders comprising goods and/or services originating outside the European Union, in which the value of the non-covered goods or services exceeds 50% of the total value of these goods or services from procedures for the award of contracts or concessions should inform economic operators thereof in the introductory part of the ‘technical specifications’ or of the ‘descriptive document’ as referred to in point 15 of Article 2(1) of Directive [2014/.../EU] on public procurement and point 15 of Article 2 of Directive [2014/.../EU] on procurement by entities operating in the water, energy, transport and postal services sectors, or in the introductory part of the ‘technical and functional requirements’ as referred to in Article 2(13) of Directive [2014/.../EU] on the award of concession contracts.

Amendment 16

Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) For contracts with an estimated value equal or above EUR 5,000,000 the Commission should approve the intended exclusion if the international agreement

Amendment

(15) For contracts and concessions with an estimated value equal or above EUR 5,000,000 the Commission should approve the intended exclusion if the international agreement...
concerning market access in the field of public procurement between the Union and the country where the goods and/or services originate contains, for the goods and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of substantial reciprocity should be presumed where restrictive procurement measures result in serious and recurring discriminations of EU economic operators, goods and services.

agreement concerning market access in the field of public procurement and concessions between the Union and the country where the goods and/or services originate contains, for the goods and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures in the field of procurement or the award of concessions leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of substantial reciprocity should be presumed where restrictive procurement measures in the field of procurement or the award of concessions result in serious and recurring discriminations of EU economic operators, goods and services or if the non-observance of international labour law provisions listed in Annex XI to the Directive on public procurement [...] 2014 and in Annex XIV to the Directive on procurement by entities operating in the water, energy, transport and postal services sectors [...] (2014) by public authorities have led to serious difficulties encountered by European undertakings and reported to the Commission, when those European undertakings have tried to secure the award of contracts and concessions in third countries.

Amendment 17

Proposal for a regulation
Recital 16

*Text proposed by the Commission*

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine to what degree public procurement laws of the country concerned ensure transparency in line with international standards in the field

*Amendment*

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine to what degree the laws on public procurement and concessions of the country concerned ensure transparency in line with
of public procurement and preclude any discrimination against Union goods, services and economic operators. In addition, it should examine to what degree public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

international standards in the field of public procurement and concessions preclude any discrimination against Union goods, services and economic operators. In addition, it should examine to what degree public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operator or to what degree the non-observance of international labour law provisions listed in Annex XI to the Directive on public procurement [...] 2014 and in Annex XIV to the Directive on procurement by entities operating in the water, energy, transport and postal services sectors [...] (2014) by public authorities have led to serious difficulties encountered by European undertakings and reported to the Commission, when these European undertakings have tried to secure the award of contracts and concessions in third countries.

Amendment 18
Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) When assessing tenders comprising goods and/or services originating outside the Union, contracting authorities and the Commission should ensure the compliance with the criteria for fair trade, as well as for the compliance with labour rights and environmental standards as laid down in Article 15(2) of and Annex 11 to the Directive on public procurement [...] (2014) XXX.

Amendment 19
Proposal for a regulation
Recital 17

Text proposed by the Commission

Amendment

(17) The Commission should be able to
prevent the possible negative impact of an intended exclusion on on-going trade negotiations with the country concerned. Therefore, the Commission may, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement and the Commission considers that there is a reasonable prospect of removing the restrictive procurement practices in the near future, it should be able to adopt a implementing act providing that goods and services from that country should not be excluded from procedures for the award of contracts for a period of one year.

Amendment 20
Proposal for a regulation
Recital 18

Text proposed by the Commission

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for in this Regulation.

Amendment

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union and to concessions falls within the scope of the common commercial policy, Member States or their contracting authorities/entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than the ones provided for in this Regulation or by relevant Union law.

Amendment 21
Proposal for a regulation
Recital 19

Text proposed by the Commission

(19) In view of the greater difficulty for contracting authorities/entities to assess, in the context of tenders comprising goods and/or services originating outside the European Union, in which the value of the

Amendment

(19) In view of the greater difficulty for contracting authorities/entities to assess, in the context of tenders comprising goods and/or services originating outside the European Union, in which the value of the
non-covered goods or services exceeds 50% of the total value of these goods or services, the explanations of tenderers it is appropriate to provide for an increased transparency in the treatment of abnormally low tenders. In addition to the rules provided by Article 69 of the Directive on public procurement and Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors the contracting authority/entity that intends to accept such an abnormally low tender, should inform the other tenderers of this in writing including the reasons for the abnormally low character of the price or costs charged. This allows these tenderers to contribute to a more accurate assessment as to whether the successful tenderer will be able to fully perform the contract under the conditions spelled out in the tender documentation. Therefore, this additional information would achieve a more level playing field on the EU public procurement market.

Where the tenderer cannot provide a sufficient explanation, the contracting authority should be entitled to reject the tender. This allows these tenderers to contribute to a more accurate assessment as to whether the successful tenderer will be able to fully perform the contract under the conditions spelled out in the tender documentation. Therefore, this additional information would achieve a more level playing field on the EU public procurement market.

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Amendments 22 and 91

Proposal for a regulation
Recital 20

(20) The Commission should be able, on its own initiative or at the application of interested parties or a Member State, to initiate at any time an external procurement investigation into restrictive procurement practices allegedly maintained by a third country. In particular it shall take into account the fact that the Commission has approved a number of intended exclusions concerning a third country pursuant to Article 6(2) of this Regulation. Such investigative procedures should be without prejudice to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization14.


Amendment 23

Proposal for a regulation
Recital 21

(21) Where the Commission has, on the basis of information available to it, reason to believe that a third country has adopted or maintains a restrictive procurement practice, it should be able to start an investigation. If the existence of a restrictive procurement practice in a third country is confirmed the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for

economic operators, goods and services in public procurement in that country.

economic operators, goods and services in public procurement in that country.

**Amendment 24**

**Proposal for a regulation**

**Recital 22**

*Text proposed by the Commission*

(22) If the consultations with the country concerned do not lead to sufficient improvement in the tendering opportunities for EU economic operators, goods and services, the Commission should take appropriate restrictive measures.

*Amendment*

(22) If the consultations with the country concerned do not lead to sufficient improvement in the tendering opportunities for EU economic operators, goods and services *within a reasonable timeframe or remedial/corrective measures taken by the third country concerned are not considered satisfactory*, the Commission should take appropriate restrictive measures.

**Amendment 25**

**Proposal for a regulation**

**Recital 23**

*Text proposed by the Commission*

(23) Such measures may entail the mandatory exclusion of certain third-country goods and services from public procurement procedures in the European Union, or may subject tenders made up of goods or services originating in that country to a mandatory price penalty. To avoid circumvention of these measures, it may also be necessary to exclude certain foreign-controlled or owned juridical persons established in the European Union, that are not engaged in substantive business operations such that it has a direct and effective link with the economy of a Member State concerned. Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.

*Amendment*

(23) Such measures may entail the mandatory exclusion of certain third-country goods and services from public procurement procedures *or procedures for the award of concessions* in the European Union, or may subject tenders made up of goods or services originating in that country to a mandatory price penalty. To avoid circumvention of these measures, it may also be necessary to exclude certain foreign-controlled or owned juridical persons established in the European Union, that are not engaged in substantive business operations such that it has a direct and effective link with the economy of a Member State concerned. Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond and should apply for a maximum period of five years, which can be extended for another five years.
Amendment 26
Proposal for a regulation
Recital 24 a (new)

Text proposed by the Commission
(24a) It is also imperative that, in view of an appropriate integration of environmental, social and labour requirements, contracting authorities take relevant measures to ensure compliance with obligations in the fields of environmental, social and labour law that apply at the place where the works are executed and result from international obligations, laws, regulations, decrees and decisions, at both national and Union level, as well as from collective agreements.

Amendment 27
Proposal for a regulation
Recital 26

Text proposed by the Commission
(26) In the light of the overall policy of the Union with regard to least-developed countries as provided for, inter alia, in Council Regulation (EC) No 732/2008 of 22 July 2008 applying a scheme of generalised tariff preferences from 1 January 2009, it is appropriate to assimilate goods and services from these countries to Union goods and services.

Amendment
(26) In the light of the overall policy objective of the Union to support the economic growth of developing countries and their integration into the global value chain, which is the basis for the establishment by the Union of a generalised system of preferences as outlined in the European Parliament and Council Regulation (EU) No 978/2012, it is appropriate to assimilate goods and services from least-developed countries benefitting from the "Everything But Arms" arrangement as well as goods and services from developing countries considered to be vulnerable due to a lack of diversification and insufficient integration within the international trading system as defined respectively in Annexes IV and VII to Regulation (EU) No 978/2012, to Union goods and services.
Amendment 28

Proposal for a regulation
Recital 27

(27) In order to reflect in the legal order of the European Union the international market access commitments undertaken in the field of public procurement after the adoption of this Regulation, the Commission should be empowered to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union amendments to the list of international agreements annexed to this Regulation. It is of particular importance that the Commission should carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Amendment 29

Proposal for a regulation
Recital 30

(30) The Commission should report at least every three years on the application of this Regulation.

(30) The Commission should report at least every three years on the application of this Regulation. In its report, the Commission should assess the functioning of this Regulation as well as the progress made in achieving reciprocity in the opening of public procurement markets. Together with the second report on the application of this Regulation, due at the latest six years following this Regulation's entry into force, the Commission should either submit a proposal to improve this Regulation or set out the reasons why, in the Commission's view, no changes to this Regulation are needed. In the event that
the Commission neither submits a proposal nor sets out the reasons why no changes are needed to this Regulation, this Regulation should cease to apply.

Amendment 30

Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) In accordance with the principle of proportionality, it is necessary and appropriate for achievement of the basic objective of establishing a common external policy in the field of public procurement to lay down rules on the treatment of goods and services not covered by the international commitments of the European Union. This Regulation on the access of third-country economic operators, goods and services does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty on European Union.

Amendment

(31) In accordance with the principle of proportionality, it is necessary and appropriate for achievement of the basic objective of establishing a common external policy in the field of public procurement and concessions to lay down rules on the treatment of goods and services not covered by the international commitments of the European Union. This Regulation on the access of third-country economic operators, goods and services does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty on European Union.

Amendment 31

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

Amendment

1. This Regulation lays down rules on the access of third-country goods and services to the award of contracts for the execution of works or a work, the supply of goods and the provision of services by Union contracting authorities/entities, and establishes procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries. Member States or their contracting authorities/entities may restrict the access of third country goods and services to their tendering procedures only by measures provided for in this
Regulation or by relevant Union law.

Amendment 93
Proposal for a regulation
Article 1 – paragraph 2 – subparagraph 2

Text proposed by the Commission
This Regulation shall apply to the award of contracts where the goods or services are procured for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or in the provision of services for commercial sale.

Amendment
This Regulation shall apply to the award of contracts where the goods or services are procured for governmental purposes and to the award of works and services concessions provided for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or in the provision of services for commercial sale.

Amendment 33
Proposal for a regulation
Article 2 – paragraph 1 – point a

Text proposed by the Commission
(a) ‘supplier’ means any natural or legal person which offers on the market goods;

Amendment
(a) ‘economic operator’ means any natural or legal person or public entity or group of such persons and/or entities which offers the execution of works or a work, the supply of products or the provision of services on the market;

Amendment 34
Proposal for a regulation
Article 2 – paragraph 1 – point b

Text proposed by the Commission
(b) ‘service provider’ means any natural or legal person which offers on the market the execution of works or a work, or services;

Amendment
(b) ‘tenderer’ means an economic operator that has submitted a tender;

Amendment 35
Proposal for a regulation
Article 2 – paragraph 1 – point d
(d) ‘covered goods or services’ means a good or service originating in a country with which the Union has concluded an international agreement in the field of public procurement including market access commitments and in respect of which the relevant agreement applies. Annex I to this Regulation contains a list of relevant agreements;

(This amendment applies to the whole of the legislative text (addition of the reference to concessions whenever public procurement is mentioned); adoption of the regulation will entail technical changes throughout the text.)

Amendment 39

Proposal for a regulation
Article 2 – paragraph 1 – point g a (new)

Text proposed by the Commission

Amendment

(ga) ‘lack of substantial reciprocity’ means the existence of any legislative, regulatory or administrative measure, procedure or practice, adopted or performed by public authorities or individual procuring entities in a third country, restricting access to public procurement or concession markets, in particular by a lack of transparency compared to international standards and discriminatory legislative provisions and administrative practices, which results in serious and recurrent discriminatory treatment against Union economic operators, goods or services.

A ‘lack of substantial reciprocity’ shall also be presumed, where the non-observance of international labour law provisions listed in Annex XI to the Directive on public procurement [...] 2014 and in Annex XIV to the Directive on procurement by entities operating in the water, energy, transport and postal...
services sectors [...] (2014) by public authorities have led to difficulties encountered by European undertakings and reported to the Commission, when those European undertakings have tried to secure the award of contracts and concessions in third countries.

Amendment 36
Proposal for a regulation
Article 2 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the term ‘economic operator’ shall cover equally the concepts of supplier and service provider;

deleted

Amendment 37
Proposal for a regulation
Article 2 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) an economic operator who has submitted a tender shall be designated a ‘tenderer’;

deleted

Amendment 38
Proposal for a regulation
Article 2 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) a ‘mandatory price penalty’ shall refer to an obligation for contracting entities to increase, subject to certain exceptions, the price of services and/or goods originating in certain third countries that have been offered in contract award procedures or concession award procedures.

(This amendment applies to the entire legislative text under consideration (addition of the reference to ‘concession award procedures’ whenever there is mention of ‘contract award procedures’, in
the singular or the plural); if it is adopted, technical adjustments will have to be made throughout the text.)

Amendment 40

Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission


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18 OJ L 302, 19.10.1992, p. 1

Amendment 41

Proposal for a regulation
Article 3 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

The origin of a service shall be determined on the basis of the origin of the natural or legal person providing it. The origin of the service provider shall be deemed to be:

Amendment

The origin of a service shall be determined on the basis of the origin of the natural or legal person providing it. The origin of the economic operator providing the service shall be deemed to be:

Amendment 42

Proposal for a regulation
Article 4

Text proposed by the Commission

Treatment of covered goods and services

When awarding contracts for the execution of works and/or a work, the supply of goods or the provision of services, contracting authorities/entities shall treat covered goods and services equally to goods and services originating in the European Union.

Amendment

Treatment of covered goods and services

When awarding contracts for the execution of works and/or a work, the supply of goods or the provision of services, or when awarding work and services concessions, contracting authorities/entities shall treat covered goods and services equally to goods and services originating in the
Goods or services originating in least-developed countries listed in Annex I to Regulation (EC) No 732/2008 shall be treated as covered goods and services. Goods or services originating in least-developed countries listed in Annex IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council or in developing countries considered to be vulnerable due to a lack of diversification and insufficient integration within the international trading system and in the world economy as defined in Annex VII to Regulation (EU) No 978/2012 shall be treated as covered goods and services.

Amendment 43

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

1. Upon request of contracting authorities/entities the Commission shall assess whether to approve, for contracts with an estimated value equal or above EUR 5,000,000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.

Amendment

1. Where the Commission initiates an external procurement investigation as provided for in Article 8, the Commission shall, upon request of contracting authorities/entities and after publication of the notice of the initiation in the Official Journal of the Union, assess whether to approve, for contracts with an estimated value equal or above EUR 5 000 000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.

Amendment 44

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Where contracting authorities/entities intend to request the exclusion from procedures for the award of contracts on Union.

Amendment

Where contracting authorities/entities intend to request the exclusion from procedures for the award of contracts on
the basis of paragraph 1 they shall indicate this in the contract notice they publish pursuant to Article 35 of Directive 2004/18/EC or pursuant to Article 42 of Directive 2004/17/EC or Article 26 of the Directive on the award of concession contracts.

Amendment 45
Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 46
Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 4 – point b

Text proposed by the Commission

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

Amendment

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

Amendment 47
Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 4 – point d a (new)

Text proposed by the Commission

(da) where appropriate, any other information deemed useful by the
Commission.

Amendment 48

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 5

Text proposed by the Commission

The Commission may ask the contracting authority/entity for additional information.

Amendment

deleted

Amendment 49

Proposal for a regulation
Article 6 – paragraph 2 – subparagraph 6

Text proposed by the Commission

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

Amendment

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

Amendment 50

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

3. For contracts referred to in paragraph 1, the Commission shall adopt an implementing act concerning the approval of the intended exclusion within a period of two months commencing on the first working day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2). This period may be extended once by a maximum of two months in duly justified cases, in particular if the information contained in

Amendment

3. Where the Commission finds, for the goods and/or services for which the exclusion is proposed, a lack of substantial reciprocity as defined in point (ga) of Article 2(1), it shall adopt an implementing act approving the exclusion of the tenders concerned by the investigation in accordance with the examination procedure referred to in Article 17(2). The implementing act shall be adopted within a period of one month commencing on the first calendar day after a request referred to in paragraph 1.
the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this two-month period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.

This period may be extended once by a maximum of one month in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this one-month period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.

That exclusion shall be a temporary measure pending the finalisation of the external procurement investigation as provided for in Article 8, the conclusions of the consultation procedure provided for under Article 9 and, where applicable, the adoption of any measures limiting access of non-covered goods and services to the Union public procurement market under Article 10.

Amendment 51

Proposal for a regulation
Article 6 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) where an agreement referred to in point (a) does not exist and the third country maintains restrictive procurement or concession award measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned, notably where those restrictive measures are detrimental to the Union’s industrial policy.

Amendment 52

Proposal for a regulation
Article 6 – paragraph 4 – subparagraph 2

Text proposed by the Commission

For the purposes of point (b), a lack of

Amendment

deleted
substantial reciprocity is presumed where restrictive procurement measures result in serious and recurring discriminations of Union economic operators, goods and services.

Amendment 53

Proposal for a regulation
Article 6 – paragraph 5

Text proposed by the Commission

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

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

(b) to what degree public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Amendment 92

Proposal for a regulation
Article 6 – paragraph 7

Text proposed by the Commission

7. Contracting authorities/entities which have excluded tenders pursuant to paragraph 1 shall indicate this in the contract award notice they publish pursuant to Article 35 of Directive 2004/18/EC, Article 42 of Directive 2004/17/EC, or Article 27 of the Directive on the award of concession contracts. The Commission shall adopt implementing acts establishing the standard forms for contract award notices. Those implementing acts shall be adopted in accordance with the advisory
procedure referred to in Article 17 (3).

Amendment 55

Proposal for a regulation
Article 6 – paragraph 8

8. Paragraph 1 **shall** not apply where the Commission has adopted the implementing act on temporary access of the goods and services from a country engaged in **substantive** negotiations with the Union as set out in Article 9(4).

Amendment

8. Paragraph 1 **may** not apply where the Commission has adopted the implementing act on temporary access of the goods and services from a country engaged in negotiations with the Union as set out in Article 9(4). **The Commission shall duly justify its corresponding decision to the contracting entity that submitted the application.**

Amendment 56

Proposal for a regulation
Article 7 – paragraph 1

Where the contracting authority/entity intends, under Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

Amendment

Where the contracting authority/entity intends, under Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged. **Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international**
Amendment 57
Proposal for a regulation
Article 7 – paragraph 2

**Text proposed by the Commission**

A contracting authority/entity *may withhold any information* release of it would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of economic operators, whether public or private, or might prejudice fair competition between them.

**Amendment**

After being informed by the contracting authority/entity of their intention to accept an abnormally low tender, the other tenderers shall have the possibility to provide relevant information to the contracting authority/entity within a reasonable period of time in order to allow the contracting authority/entity to take a decision on the acceptance in full knowledge of potential factors which might have an influence on the assessment of the abnormally low character of the price or costs charged.

Amendment 58
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 1

**Text proposed by the Commission**

*Where the Commission considers it to be in the interest of the Union, it* may at any time, on its own initiative or upon application of interested parties or a Member State, may initiate an external procurement investigation into alleged restrictive procurement measures.

**Amendment**

The Commission may at any time, on its own initiative or upon application of interested parties, contracting authority/entity or a Member State, may initiate an external procurement investigation into alleged restrictive procurement measures. *In its decision to initiate an external procurement investigation, the Commission shall take into account the number of requests made by contracting authorities/entities or Member States. In the event that the Commission declines to initiate an investigation, it shall duly justify its decision to the Member State, interested party or the contracting entity that*
submitted the application.

Amendment 59
Proposal for a regulation
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In particular, the Commission shall take into account whether a number of intended exclusions have been approved pursuant to Article 6(3) of this Regulation.

Amendment 60
Proposal for a regulation
Article 8 – paragraph 2

Text proposed by the Commission

2. The investigation referred to in paragraph 1 is conducted on the basis of the criteria laid down in point (ga) of Article 2(1).

Amendment 61
Proposal for a regulation
Article 8 – paragraph 3

Text proposed by the Commission

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties and Member States and/or facts collected by the Commission during its investigation, and shall be concluded within a period of nine months after the initiation of the investigation. In duly justified cases this period may be extended by three months.

The assessment by the Commission shall take into account the requests made by
contracting authorities/entities for investigations under article 6 paragraph 1 after initiating the procedure laid down in this article.

Amendment 62

Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 1

Text proposed by the Commission

When, after the initiation of a consultation, the country concerned takes satisfactory remedial/corrective measures, but without undertaking new market access commitments, the Commission may suspend or terminate the consultation.

Amendment

When, after the initiation of a consultation, the country concerned takes satisfactory remedial/corrective measures, but without undertaking new market access commitments, the Commission may suspend or terminate the consultation or invite the country concerned to enter into negotiations under Article 9(4).

Amendment 63

Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 3 – introductory part

Text proposed by the Commission

Where the remedial/corrective measures taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission may:

Amendment

Where the remedial/corrective measures taken by the third country concerned are rescinded, suspended or improperly implemented, the Commission acts under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country.

Amendment 64

Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 3 – point i

Text proposed by the Commission

(i) resume or restart the consultation with the third country concerned, and/or

Amendment

deleted
Amendment 65

Proposal for a regulation
Article 9 – paragraph 3 – subparagraph 3 – point ii

Text proposed by the Commission

(ii) act under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country

Amendment

deleted

Amendment 66

Proposal for a regulation
Article 9 – paragraph 4

Text proposed by the Commission

4. Where, after the initiation of a consultation, it appears that the most appropriate means to end a restrictive procurement practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with the provisions of Articles 207 and 218 of the Treaty on the Functioning of the European Union. If a country has engaged in substantive negotiations with the European Union concerning market access in the field of public procurement, the Commission may adopt an implementing act providing that goods and services from that country cannot be excluded from procedures for the award of contracts pursuant to Article 6.

Amendment

The Commission shall duly justify its corresponding decision to the Member State, interested party or the contracting entity that submitted the application.

Amendment 67

Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 1 – introductory part

Text proposed by the Commission

The Commission may terminate the consultation if the country concerned undertakes international commitments

Amendment

The Commission may terminate the consultation if the country concerned has undertaken with the Union or at
agreed with the Union in any of the following frameworks:

international level the following measures:

Amendment 68

Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 1 – point a (new)

Text proposed by the Commission

(a) international commitments have been agreed with the European Union in any of the following frameworks:

Amendment 69

Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 1 – point a iii

Text proposed by the Commission

(iii) Expansion of its market access commitments undertaken under the WTO Government Procurement Agreement (GPA) or under a bilateral agreement concluded with the Union in that framework, and

Amendment 70

Proposal for a regulation
Article 9 – paragraph 5 – subparagraph 1 – point b (new)

Text proposed by the Commission

(b) corrective measures have been adopted by the country concerned.

Amendment 71

Proposal for a regulation
Article 9 – paragraph 6

Text proposed by the Commission

6. In the event that a consultation with a third country does not lead to satisfactory results within 15 months from the day the consultation with the third country started, the Commission shall terminate the

Amendment

6. In the event that a consultation with a third country does not lead to satisfactory results within 12 months from the calendar day the consultation with the third country started, the Commission shall terminate the
consultation and consider acting under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country.

Amendment 72

Proposal for a regulation
Article 10 – paragraph 1

_Text proposed by the Commission_

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to a lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

_Amendment_

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that there is a lack of substantial reciprocity in market opening between the Union and the third country as referred to in point (ga) of Article 2(1), the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country for up to five years, which can be extended for another five years. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Amendment 73

Proposal for a regulation
Article 10 – paragraph 3 – introductory part

_Text proposed by the Commission_

Measures adopted pursuant to paragraph 1 may in particular be limited to:

_Amendment_

The Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements. Measures adopted pursuant to paragraph 1 may in particular be limited to:
Amendment 74

Proposal for a regulation
Article 11 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

If the measures adopted pursuant to Article 9(4) and Article 10 have not in the meantime been suspended or repealed, they shall expire five years after their entry into force.

Amendment 75

Proposal for a regulation
Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Contracting authorities/entities may decide not to apply the measures pursuant to Article 10 with respect to a procurement procedure if:

1. Contracting authorities/entities may request the Commission not to apply the measures pursuant to Article 10 with respect to a procurement procedure if:

Amendment 76

Proposal for a regulation
Article 13 – paragraph 1 – subparagraph 2 (new)

Text proposed by the Commission

Amendment

If, after 15 calendar days, the Commission has not adopted a decision approving or disapproving such a request, the request shall be deemed to have been disapproved by the Commission. In exceptional circumstances, that deadline may be extended by a further maximum period of five calendar days.

Amendment 77

Proposal for a regulation
Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Where a contracting authority/entity intends not to apply measures adopted

Where a contracting authority/entity intends not to apply measures adopted
pursuant to Article 10 of this Regulation, or reinstated pursuant to Article 11, it shall indicate its intention in the contract notice that it shall publish pursuant to Article 35 of Directive 2004/18/EC or Article 42 of Directive 2004/17/EC. It shall notify the Commission no later than ten calendar days after the publication of the contract notice.

Amendment 78

Proposal for a regulation
Article 13 – paragraph 2 – subparagraph 2

Text proposed by the Commission

This notification shall be sent by electronic using a standard form. The Commission shall adopt implementing acts establishing the standard forms for contract notices and notification in accordance with the advisory procedure referred to in Article 17 (3).

Amendment

The Commission shall adopt implementing acts establishing the standard forms for contract notices in accordance with the advisory procedure referred to in Article 17 (3).

Amendment 79

Proposal for a regulation
Article 13 – paragraph 2 – subparagraph 3

Text proposed by the Commission

The notification shall contain the following information:

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

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

(c) information on the origin of the economic operators, the goods and/or services to be admitted;

(d) the ground on which the decision not to apply the restrictive measures is based, and a detailed justification for the use of the exception;

(e) where appropriate, any other information deemed useful by the
contracting authority/entity.

Amendment 80
Proposal for a regulation
Article 15 – paragraph 3

Text proposed by the Commission

3. The delegation of power referred to in Article 14 may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment

3. The delegation of power referred to in Article 14 may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect on the calendar day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Amendment 81
Proposal for a regulation
Article 16 a (new)

Text proposed by the Commission

Article 16a

Procurement conditions in connection with Union-funded programmes in third countries

In connection with public procurements funded by the European Union and its Member States, the Commission shall ensure that a binding regulatory framework intended to govern the award and performance of public contracts is introduced. In that connection, the Union shall adopt uniform rules to ensure fair conditions of competition between Union and third country economic operators.

Amendment

Amendment 82
Proposal for a regulation
Article 18 – paragraph 2
2. Neither the Commission nor the Council, nor the European Parliament nor Member States, nor their officials shall reveal any information of a confidential nature received pursuant to this Regulation, without specific permission from the supplier of such information.

Amendment 83
Proposal for a regulation
Article 18 – paragraph 4 a (new)

Text proposed by the Commission

4a. Under no circumstances shall information received pursuant to this Regulation and declared by the provider of the information to be of a confidential nature be revealed, unless the provider gives his specific permission.

Amendment 84
Proposal for a regulation
Article 19

By 1 January 2017 and at least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

Text proposed by the Commission

At least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information. When the Commission submits its second report, it shall also submit to the European Parliament and to the Council a legislative proposal for an amended Regulation or set out the
reasons why, in its view, no changes are necessary. Should the Commission not comply with these obligations, the Regulation shall cease to apply at the end of the second year following the submission of the second report.

Amendment 85

Proposal for a regulation
Article 20

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>Articles 58 and 59 of Directive 2004/17/EC shall be <strong>repealed</strong> with effect from the entry into force of this Regulation.</td>
<td>The Commission shall assess whether Articles 58 and 59 of Directive 2004/17/EC are to be <strong>maintained</strong>. In view of the conclusions of that assessment, the Commission shall submit a legislative proposal repealing those Articles with effect from the entry into force of this Regulation.</td>
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