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*Committee on the Internal Market and Consumer Protection*

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**2011/0438(COD)**

3.5.2012

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## **DRAFT REPORT**

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))

Committee on the Internal Market and Consumer Protection

Rapporteur: Marc Tarabella

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0896),
  - having regard to Article 294(2) and Article 53(1), Article 62 and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0006/2012),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the United Kingdom House of Commons and by the Swedish Parliament asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of xx xx 2012<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of xx xx 2012<sup>2</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee of International Trade, the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on Industry, Research and Energy, the Committee on Transport and Tourism, the Committee on Regional Development, and the Committee on Legal Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> Not yet published in the Official Journal.

<sup>2</sup> Not yet published in the Official Journal.

**Amendment 1**  
**Proposal for a directive**  
**Recital 2**

*Text proposed by the Commission*

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. For that purpose, the current public procurement rules adopted pursuant to Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the 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 and other common societal goals** and in order **thereby** to increase the efficiency of public spending, **guaranteeing the best possible result in terms of cost-effectiveness and** facilitating in particular the participation of small and medium-sized enterprises in public procurement and to enable procurers to make better use of public procurement in support of common societal goals. There is also a need to **simplify Union rules on public procurement, in particular as regards the method used to achieve the sustainability objectives which should be part and parcel of public procurement policy and** 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.

Or. fr

### *Justification*

*Linked to Articles 40, 54, 55, 56, 66, 67 and 69: The role of public procurement must be emphasised with a view to achieving the objectives of the 2020 strategy, including the social objectives and those relating to sustainable development. The simplification of the directive must take account of the methods used to incorporate social and sustainability objectives into public procurement policy.*

## **Amendment 2**

### **Proposal for a directive**

#### **Recital 5**

#### *Text proposed by the Commission*

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

#### *Amendment*

(5) Under **Articles 9, 10 and 11** of the Treaty on the Functioning of the European Union, environmental protection requirements **and the concept of socially sustainable production processes** must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development **and guaranteeing, at all stages in the supply chain, compliance with the rules on public health and safety, social standards and national and Union labour law**. This Directive clarifies how the contracting authorities **should** contribute to the protection of the environment and the promotion of sustainable development **and can use their discretionary powers to lay down technical specifications and award criteria conducive to the conclusion of socially sustainable public contracts**, whilst **guaranteeing a link with the subject-matter of the contract and** ensuring that they can obtain the best value for money for their contracts.

*Justification*

*Recital amended in accordance with Article 2(23).*

**Amendment 3**  
**Proposal for a directive**  
**Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) The technical specifications, award criteria and contract performance conditions play separate, distinct roles in the public procurement process, but the substance of the specifications and criteria is similar. By means of the technical specifications, contracting authorities lay down the conditions governing eligibility to take part in the tender procedure. The ability to meet the technical specifications is a prerequisite for consideration as a candidate for the award of a contract and only works, supplies and services which comply with the specifications should therefore be considered. What is more, the award criteria enable contracting authorities to compare the advantages of various combinations of criteria. Each tender should be assessed against each of the criteria, but the ability to meet all the criteria is not a prerequisite for consideration as a candidate for the award of a contract. Finally, the contract performance conditions should be included in the contract so that it is clear how the contract is to be implemented.***

*Justification*

*Recital modified in accordance with the amendments to Articles 40, 66 and 70.*

**Amendment 4**  
**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 **and any conduct which breaches labour, environmental and public health standards**, can result in **serious distortions of competition and in** violations of the basic principles of Union law. 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.

Or. fr

**Amendment 5**  
**Proposal for a directive**  
**Recital 8**

*Text proposed by the Commission*

(8) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the 'Agreement'. **The aim of the Agreement is to establish a** multilateral framework of balanced rights and obligations relating to public contracts with a view to **achieving the liberalisation and expansion of world trade**. For contracts covered by the Agreement, as well as by

*Amendment*

(8) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the Agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994) approved in particular the World Trade Organisation Agreement on Government Procurement, hereinafter referred to as the 'Agreement'. **Within this** multilateral framework of balanced rights and obligations relating to public contracts **the Member States should endeavour to establish a more level playing field for Union and third-country enterprises in the internal market** with a view to

other relevant international agreements by which the Union is bound, contracting authorities fulfil the obligations under these agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.

***facilitating the integration of small and medium-sized enterprises (SMEs) and stimulating employment and innovation in the Union.*** For contracts covered by the Agreement, as well as by other relevant international agreements by which the Union is bound, contracting authorities fulfil the obligations under these agreements by applying this Directive to economic operators of third countries that are signatories to the agreements.

Or. fr

**Amendment 6**  
**Proposal for a directive**  
**Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) Furthermore, the Union needs an effective instrument to, on the one hand, encourage compliance with the principle of reciprocity in relation to third countries which do not provide equivalent access to European economic operators, particularly through an assessment of substantial reciprocity to be carried out by the Commission, and, on the other hand, ensure fair competition and a level playing field worldwide.***

Or. en

**Amendment 7**  
**Proposal for a directive**  
**Recital 14**

*Text proposed by the Commission*

*Amendment*

(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law

(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law

of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. ***The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules.***

However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.

of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. ***These conditions should, in particular, take account of the concept of the social business, as defined in the Commission communication of 25 October 2011 entitled ‘Social Business Initiative’.*** This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.

Or. fr

#### *Justification*

*Annex XIV, Articles 56, 57, 60 and 62.*

### **Amendment 8 Proposal for a directive Recital 15**

*Text proposed by the Commission*

(15) There is a widespread need for additional flexibility and in particular for wider access to a procurement procedure providing for negotiations, as is explicitly foreseen in the Agreement, where negotiation is allowed in all procedures. Contracting authorities should, ***unless otherwise provided in the legislation of the Member State concerned***, be able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes. This procedure should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate of cross-border tenders.

*Amendment*

(15) There is a widespread need for additional flexibility and in particular for wider access to a procurement procedure providing for negotiations, as is explicitly foreseen in the Agreement, where negotiation is allowed in all procedures. Contracting authorities should be able to use a competitive procedure with negotiation as provided for in this Directive, in various situations where open or restricted procedures without negotiations are not likely to lead to satisfactory procurement outcomes. This procedure should be accompanied by adequate safeguards ensuring observance of the principles of equal treatment and transparency. This will give greater leeway to contracting authorities to buy works, supplies and services perfectly adapted to their specific needs. At the same time, it should also increase cross-border trade, as the evaluation has shown that contracts awarded by negotiated procedure with prior publication have a particularly high success rate of cross-border tenders.

Or. fr

*Justification*

*Articles 24, 27 and 66(1).*

**Amendment 9**  
**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

(16) ***For the same reasons***, contracting authorities should be free to use the competitive dialogue. The use of this

*Amendment*

(16) ***In the case of innovative projects, including in the area of social innovation or of projects involving complex and***

procedure has significantly increased in terms of contract values over the last years. ***It has shown itself to be of use*** in cases where contracting authorities are unable to define the means of satisfying their needs or of assessing what the market can offer in terms of technical, financial or legal solutions. ***This situation may arise in particular with innovative projects, the implementation of major integrated transport infrastructure projects, large computer networks or projects involving complex and structured financing.***

***structured financing***, contracting authorities should be free to use the competitive dialogue. ***Although*** the use of this procedure has significantly increased in terms of contract values over the last years, ***the length of time taken to award contracts has highlighted the limited usefulness of the competitive dialogue*** in cases where contracting authorities are unable ***during the procedure*** to define the means of satisfying their needs or of assessing what the market can offer in terms of technical, financial or legal solutions.

Or. fr

### *Justification*

*Article 28.*

#### **Amendment 10 Proposal for a directive Recital 19**

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

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

##### *Amendment*

(19) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of procurement processes. They should become the standard means of communication and information exchange in procurement procedures. The use of electronic means also leads to time savings. ***However, the minimum periods applicable to procurement procedures under Directive 2004/18/EC should remain unchanged, in order to guarantee suitable submission deadlines.*** Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities to prevent, detect and correct errors that occur during procurement procedures.

errors that occur during procurement procedures.

Or. fr

**Amendment 11**  
**Proposal for a directive**  
**Recital 23**

*Text proposed by the Commission*

(23) In addition, new electronic purchasing techniques are constantly being developed, such as electronic catalogues. They help to increase competition and streamline public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that the use of the new techniques complies with the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. In particular, where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used and where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting authorities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues. In line with the requirements of the rules for electronic means of communication, contracting authorities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.

*Amendment*

(23) In addition, new electronic purchasing techniques are constantly being developed, such as electronic catalogues. They help to increase competition and streamline public purchasing, particularly in terms of savings in time and money. Certain rules should however be laid down to ensure that the use of the new techniques complies with the rules of this Directive and the principles of equal treatment, non-discrimination and transparency. ***In addition, the data in question should be processed in a manner consistent with national and Union data protection rules.*** In particular, where competition has been reopened under a framework agreement or where a dynamic purchasing system is being used and where sufficient guarantees are offered in respect of ensuring traceability, equal treatment and predictability, contracting authorities should be allowed to generate tenders in relation to specific purchases on the basis of previously transmitted electronic catalogues. In line with the requirements of the rules for electronic means of communication, contracting authorities should avoid unjustified obstacles to economic operators' access to procurement procedures in which tenders are to be presented in the form of electronic catalogues and which guarantee compliance with the general principles of non-discrimination and equal treatment.

*Justification**Article 34.***Amendment 12  
Proposal for a directive  
Recital 27***Text proposed by the Commission*

(27) The technical specifications drawn up by public purchasers ***need to allow*** public procurement ***to be opened*** up to competition. To that end, ***it must be possible to submit*** tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted ***in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator.*** Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

*Amendment*

(27) The technical specifications drawn up by public purchasers ***should be such that the objectives of sustainability and of opening*** public procurement up to competition ***can be achieved.*** To that end, tenders that reflect the diversity of technical solutions ***should be drawn up on the basis of performance criteria linked to the life cycle characteristics and the socially sustainable production process of the works, supplies and services,*** so as to ***guarantee equality in terms of the functional and sustainability objectives*** and obtain a sufficient level of competition. The technical specifications ***should therefore be drawn up and applied in a manner consistent with the principles of transparency, non-discrimination and equal opportunities. The application of these principles should not only protect the interests of tenderers, but also make for genuine competition, ensuring that public spending is as effective as possible by obtaining the best possible value for money.*** Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To

demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

Or. fr

**Amendment 13**  
**Proposal for a directive**  
**Recital 32**

*Text proposed by the Commission*

(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 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.

*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, ***including declarations concerning compliance with rules and standards in the areas of health and public safety, social protection and labour standards***, 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 ***concerning the supply chain*** and contracting authorities should not conclude contracts with tenderers unable to do so. Further simplification can be achieved through 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.

Or. fr

**Amendment 14**  
**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, ***and that*** contracting authorities require high-quality works, supplies and services that are optimally suited to their ***needs, include*** factors linked to the ***criteria governing the socially sustainable*** production process ***and also involve disadvantaged persons***. As a result, contracting authorities should adopt as ***the*** award ***criterion*** ‘the most economically advantageous tender’, taking into account that ***it should refer to*** quality standards ***which reflect*** technical specifications or contract performance conditions.

Or. fr

*Justification*

*Articles 40 and 66.*

**Amendment 15**  
**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) Where contracting authorities 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.

Or. fr

**Amendment 16**  
**Proposal for a directive**  
**Recital 39**

*Text proposed by the Commission*

(39) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement. The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of

*Amendment*

(39) It is of utmost importance to fully exploit the potential of public procurement to achieve the objectives of the Europe 2020 Strategy for sustainable growth. In view of the important differences between individual sectors and markets, it would however not be appropriate to set general mandatory requirements for environmental, social and innovation procurement. The Union legislature has already set mandatory procurement requirements for obtaining specific goals in the sectors of

road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment). In addition, the definition of common methodologies for life cycle costing has significantly advanced. It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to life-cycle **costing** as a further underpinning for the use of public procurement in support of sustainable growth.

road transport vehicles (Directive 2009/33/EC of the European Parliament and the Council of 23 April 2009 on the promotion of clean and energy-efficient road transport vehicles) and office equipment (Regulation (EC) No 106/2008 of the European Parliament and the Council of 15 January 2008 on a Community energy-efficiency labelling programme for office equipment). In addition, the definition of common methodologies for life cycle costing **and the costing of socially sustainable production processes** has significantly advanced. It therefore appears appropriate to continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in function of the particular policies and conditions prevailing in the relevant sector and to promote the development and use of European approaches to life-cycle costing **and the costing of socially sustainable production processes** as a further underpinning for the use of public procurement in support of sustainable growth. ***Sector-specific legislation should also incorporate technical specifications and award criteria which are designed to take account of the benefits of social and environmental sustainability in contexts where no figure can be put on them, at the same time providing a link with the subject-matter of the contract and complying with the principles of transparency, non-discrimination and equal opportunities.***

Or. fr

#### *Justification*

*Cf. Article 2(22b) (new), Article 40 and Annex VIII.*

**Amendment 17**  
**Proposal for a directive**  
**Recital 40**

*Text proposed by the Commission*

(40) These sector-specific measures *must* be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities *can* determine the most economically advantageous tender *and the lowest cost* using a life-cycle costing approach, *provided that the methodology to be used is established in an objective and non-discriminatory manner and accessible to all interested parties*. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.

*Amendment*

(40) These sector-specific measures *should* be complemented by an adaptation of the public procurement Directives empowering contracting authorities to pursue the objectives of the Europe 2020 Strategy in their purchasing strategies. It should hence be made clear that contracting authorities *should* determine the most economically advantageous tender using an approach based on life-cycle costing *and costing of the sustainable production process, in accordance with Articles 9, 10 and 11 of the Treaty on the Functioning of the European Union, which refer to the social and environmental requirements to be taken into account in the definition and implementation of Union policies*. The notion of life-cycle costing includes all costs over the life cycle of works, supplies or services, both their internal costs (such as development, production, use, maintenance and end-of-life disposal costs) and their external costs, provided they can be monetised and monitored. Common methodologies should be developed at the level of the Union for the calculation of life-cycle costs for specific categories of supplies or services; whenever such a methodology is developed its use should be made compulsory.

Or. fr

**Amendment 18**  
**Proposal for a directive**  
**Recital 41**

*Text proposed by the Commission*

(41) Furthermore, in technical

PE483.468v01-00

*Amendment*

(41) Furthermore, in technical

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specifications and in award criteria, contracting authorities should be allowed to refer to ***a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service***, provided that ***they*** are linked to the subject-matter of the public contract. In order to better integrate social considerations in public procurement, procurers may also be allowed to ***include, in the award criterion of the most economically advantageous tender***, characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. ***Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. Any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment.*** They should be applied ***in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers*** in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as ***an award criterion*** the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality of contract performance and, as a result, the ***economic***

specifications and in award criteria, contracting authorities should be allowed to refer to ***life-cycle characteristics and the socially sustainable production process***, provided that ***these characteristics or this process are*** linked to the subject-matter of the public contract. ***The technical specifications and award criteria should be interpreted broadly. Accordingly, the technical specifications and award criteria may refer to the life cycle characteristics and the socially sustainable production process, including the social and environmental aspects of the production process or of the provision of products or services. Contracting authorities may also use the technical specifications and award criteria to minimise damaging social or environmental effects or maximise positive social or environmental effects.*** In order to better integrate social considerations in public procurement, procurers may also be allowed to ***incorporate in the technical specifications and award criteria*** characteristics related to the working conditions of the persons directly participating in the process of production or provision in question. They should be applied in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. For service contracts and for contracts involving the design of works, contracting authorities should also be allowed to use as ***technical specifications and award criteria*** the organisation, qualification and experience of the staff assigned to performing the contract in question, as this may affect the quality ***and social sustainability*** of contract performance and, as a result, the ***identification*** of the tender ***which offers the best value for money.***

value of the tender.

Or. fr

**Amendment 19**  
**Proposal for a directive**  
**Recital 42**

*Text proposed by the Commission*

(42) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. In order to prevent possible disadvantages during contract performance, contracting authorities should be obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. ***Where the tenderer cannot provide a sufficient explanation, the contracting authority should be entitled to reject the tender.*** Rejection should be mandatory in cases where the contracting authority has established that the abnormally low price charged results from non-compliance with mandatory Union legislation in the fields of social, labour or environmental law or international labour law provisions.

*Amendment*

(42) Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices. In order to prevent possible disadvantages during contract performance, contracting authorities should be obliged to ask for an explanation of the price charged where a tender significantly undercuts the prices demanded by other tenderers. Rejection ***of the tender*** should be mandatory in cases where the contracting authority has established that the abnormally low price charged results from non-compliance with mandatory Union legislation in the fields of social, labour or environmental law or international labour law provisions. ***Alternatively, if the tenderer cannot provide a satisfactory explanation for the abnormally low price the contracting authority should reject the tender.***

Or. fr

**Amendment 20**  
**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

*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 are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For 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.

discriminatory, are linked to the subject-matter of the contract and are indicated in the contract notice, the prior information notice used as a means of calling for competition or the procurement documents. They may, in particular, be intended to favour on-site vocational training, the employment of people experiencing particular difficulty in achieving integration, the fight against unemployment, protection of the environment or animal welfare. For instance, mention may be made, amongst other things, of the requirements — applicable during performance of the contract — to implement training measures for the unemployed or young persons, to comply in substance with fundamental International Labour Organisation (ILO) Conventions, even where such Conventions have not been implemented in national law, and to recruit more disadvantaged persons than are required under national legislation.

Or. fr

**Amendment 21**  
**Proposal for a directive**  
**Recital 44**

*Text proposed by the Commission*

(44) The laws, regulations **and collective agreements**, at both national and Union level, that are in force in the areas of employment conditions and safety at work apply during the performance of a public contract, **provided that such rules, and their application, comply with Union law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive**

*Amendment*

(44) The laws **and** regulations, at both national and Union level, that are in force in the areas of employment conditions and safety at work apply during the performance of a public contract **and the collective agreements which apply on the territory where the works, services or supplies are to be performed or provided.** Non-compliance with those obligations may be considered to be grave misconduct on the part of the economic operator

***96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>23</sup> lays down the minimum conditions that must be observed by the host country in respect of such posted workers. Where national law contains provisions to this effect,*** non-compliance with those obligations may be considered to be grave misconduct on the part of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.

concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.

Or. fr

*Justification*

*Article 69.*

**Amendment 22**  
**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) 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 **be provided with relevant information**, in particular when participating in procurement procedures on a cross-border basis.

Or. fr

**Amendment 23**  
**Proposal for a directive**  
**Article 1 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. 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.***

Or. en

**Amendment 24**  
**Proposal for a directive**  
**Article 2 – paragraph 1 – point 22**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 25**  
**Proposal for a directive**  
**Article 2 – paragraph 1 – point 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) ‘Life-cycle characteristics’ means elements relating to any part of the life cycle of a product or works or the provision of a service, as defined in point 22 of this Article. Life-cycle characteristics can be invisible characteristics that are embedded in a product as a result of choices made in the production or other non-use phases of the life cycle of the product, even if such characteristics are not apparent in the physical characteristics or functional qualities of the resulting product or service;***

Or. en

**Amendment 26**  
**Proposal for a directive**  
**Article 2 – point 22 b (new)**

*Text proposed by the Commission*

*Amendment*

***(22b) 'socially sustainable production process' means a production process in which the provision of works, services and supplies complies with 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 compliance with 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;***

Or. en

**Amendment 27**  
**Proposal for a directive**  
**Article 6 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The practical implementation of the Agreement on Government Procurement<sup>1</sup> within the Union legislative framework on public procurement shall be based on a prior assessment of the correct application of the principle of substantial reciprocity in market opening between the Union and third country signatories. Such assessment of substantial reciprocity shall also be extended to third countries not being a party to the Agreement on Government Procurement and having access to the European public procurement market;***

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Or. en

**Amendment 28**  
**Proposal for a directive**  
**Article 10 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the acquisition, development, production or co-production of programme material intended for **audiovisual** media services, **that are awarded by broadcasters**, or contracts for broadcasting **time that are awarded to audiovisual media service providers**;

*Amendment*

(b) the acquisition, development, production or co-production of programme material **and related preparatory services** intended for media services, or contracts for broadcasting **or distribution and transmission**;

Or. en

**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 central bank services and operations conducted with the European Financial Stability Facility, **in particular transactions by contracting authorities to raise money or capital and services provided by central banks**;

Or. fr

**Amendment 30**  
**Proposal for a directive**  
**Article 11 – title**

*Text proposed by the Commission*

*Amendment*

**Relations** between **public** authorities

**Cooperation** between **contracting** authorities

Or. fr

**Amendment 31**  
**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 1 - point b**

*Text proposed by the Commission*

*Amendment*

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

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

Or. fr

**Amendment 32**  
**Proposal for a directive**  
**Article 11 – paragraph 1 – subparagraph 1 - point c**

*Text proposed by the Commission*

*Amendment*

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

(c) there is no private participation in the controlled legal person, **with the exception of forms of private participation specific to the controlling contracting authority or to the controlled legal person in their capacity as public-law bodies, and provided that the forms of participation involved are consistent with the concept of the social business.**

Or. fr

**Amendment 33**  
**Proposal for a directive**  
**Article 11 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract, ***with the exception of forms of private participation specific to the controlling contracting authority or to the controlled legal person in their capacity as public-law bodies, and provided that the forms of participation involved are consistent with the concept of the social business.***

Or. fr

**Amendment 34**  
**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 1 - point b**

*Text proposed by the Commission*

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

*Amendment*

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

Or. fr

**Amendment 35**  
**Proposal for a directive**  
**Article 11 – paragraph 3 – subparagraph 1 - point c**

*Text proposed by the Commission*

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

*Amendment*

(c) there is no private participation in the controlled legal person, ***with the exception of forms of private participation specific to the controlling contracting authority or to the controlled legal person in their capacity as public-law bodies, and provided that the forms of participation involved are consistent with the concept of the social business.***

Or. fr

**Amendment 36**  
**Proposal for a directive**  
**Article 11 – paragraph 4**

*Text proposed by the Commission*

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

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

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

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

*Amendment*

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

a) the agreement establishes cooperation between the participating contracting authorities ***for the purpose of the performance of a shared public service task or the pooling of resources in order to enable them to perform their own tasks;***

b) the agreement ***does not provide for or have any bearing on the award of the contracts which may have to be concluded so that the public service task referred to in point a) can be performed;***

c) ***the agreement is concluded only between public authorities, with no participation by a private party with the exception of forms of private participation specific to the participating contracting***

*relevant in the context of the agreement;*

*authorities acting in their capacity as public-law bodies which have been mandated by a Member State to perform a public service task, in accordance with the concept of a social enterprise.*

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

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

Or. fr

**Amendment 37**  
**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 participation is private and specific to the participating contracting authorities, acting in performance of the public-service task conferred on them by a Member State, in their capacity as public-law bodies, and solely on the basis of public- or social-interest considerations and without pursuing objectives of any other kind, in accordance with the concept of the social business.***

Or. fr

**Amendment 38**  
**Proposal for a directive**  
**Article 16 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

2. Groups of economic operators may submit tenders or put themselves forward as candidates. Contracting authorities shall not establish specific conditions for participation of such groups in procurement procedures which are not imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be required by the contracting authorities to assume a specific legal form.

*Amendment*

2. Groups of economic operators may submit tenders or put themselves forward as candidates. ***Groups of economic operators, notably small and medium-sized enterprises (SMEs) may take the form of a consortium of enterprises.*** Contracting authorities shall not establish specific conditions for participation of such groups in procurement procedures which are not imposed on individual candidates. In order to submit a tender or a request to participate, those groups shall not be required by the contracting authorities to assume a specific legal form.

Or. en

**Amendment 39**  
**Proposal for a directive**  
**Article 16 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Contracting authorities shall give the possibility to a group of economic operators to fulfil all technical, legal and financial requirements as a single entity, summing up the individual characteristics of the components of the group.***

Or. en

**Amendment 40**  
**Proposal for a directive**  
**Article 19 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. en

**Amendment 41**  
**Proposal for a directive**  
**Article 19 – paragraph 6 – subparagraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 42**  
**Proposal for a directive**  
**Article 21 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 43**  
**Proposal for a directive**  
**Article 21 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

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

*Amendment*

For the purposes of this Article, ‘*shared* interests’ means any economic *interest or family ties*, shared with the candidates or the tenderers, including conflicting professional interests.

Or. en

**Amendment 44**  
**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 45**  
**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 4 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 46**  
**Proposal for a directive**  
**Article 24 – paragraph 1 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

**Amendment 47**  
**Proposal for a directive**  
**Article 25 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 48**  
**Proposal for a directive**  
**Article 25 – paragraph 1 – subparagraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1).***

Or. en

**Amendment 49**  
**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.

Or. en

**Amendment 50**  
**Proposal for a directive**  
**Article 26 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1).***

Or. en

**Amendment 51**  
**Proposal for a directive**  
**Article 26 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 52**  
**Proposal for a directive**  
**Article 26 – paragraph 3 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

3. Where contracting authorities have published a prior information notice which is not used as a means of calling for competition, the minimum time limit for the receipt of tenders as laid down in the second subparagraph of paragraph 2 of this Article may be shortened to **22** days, provided that all of the following conditions are fulfilled:

Or. en

**Amendment 53**  
**Proposal for a directive**  
**Article 27 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

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

*Amendment*

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; the minimum time limit for the receipt of tenders shall be **37** days from the date on which the invitation is sent. Article 26 (3) to (6) shall apply.

Or. en

**Amendment 54**  
**Proposal for a directive**  
**Article 27 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The contract shall be awarded on the sole basis of the award criterion of the most economically advantageous tender in accordance with Article 66(1).***

**Amendment 55**  
**Proposal for a directive**  
**Article 28 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

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

**Amendment 56**  
**Proposal for a directive**  
**Article 28 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 57**  
**Proposal for a directive**  
**Article 28 – paragraph 7 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 58**  
**Proposal for a directive**  
**Article 33 – paragraph 3 – point a**

*Text proposed by the Commission*

3. The electronic auction shall be based ***on one of the following criteria:***

***(a) solely on prices where the contract is awarded to the tender offering the lowest cost;***

***(b) on prices and/or on the new values of the features of the tenders indicated in the specifications where the contract is awarded to the most economically advantageous tender.***

*Amendment*

3. The electronic auction shall be based on prices and/or on the new values of the features of the tenders indicated in the specifications.

Or. en

**Amendment 59**  
**Proposal for a directive**  
**Article 33 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

5. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award *critierion or* criteria and with the weighting fixed for them.

*Amendment*

5. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criteria and with the weighting fixed for them.

Or. en

**Amendment 60**  
**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

The technical specifications shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply *in order to achieve both the use and sustainability objectives of the contracting authority.*

Or. en

**Amendment 61**  
**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 *shall* 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 *points (22), (22a) and (22b)* of Article 2.

**Amendment 62**  
**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 4**

*Text proposed by the Commission*

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

*Amendment*

For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, ***which shall be stated in the call for competition and the tender documents***, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.

Or. en

**Amendment 63**  
**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***Technical specifications may also include, as appropriate, requirements relating to:***

Or. en

**Amendment 64**  
**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 5 a (new) – point a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 65**  
**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 5 a (new) – point b (new)**

*Text proposed by the Commission*

*Amendment*

***(b) life cycle characteristics;***

Or. en

**Amendment 66**  
**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 5 a (new) – point c (new)**

*Text proposed by the Commission*

*Amendment*

***(c) socially sustainable production process;***

Or. en

**Amendment 67**  
**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 5 a (new) – point d (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 68**  
**Proposal for a directive**  
**Article 40 – paragraph 1 – subparagraph 5 a (new) – point e (new)**

*Text proposed by the Commission*

*Amendment*

*(e) safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions;*

Or. en

**Amendment 69**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

*(f) 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.*

Or. en

**Amendment 70**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

(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;

(a) in terms of performance or functional 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,***

*technical specifications may 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, and not only to the performance or functional requirements of the works, supplies, or services in use;*

Or. en

**Amendment 71**  
**Proposal for a directive**  
**Article 40 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) by reference to *technical* specifications and, in *order of preference*, to *national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardisation bodies or*  *when those do not exist*  national standards, *national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies*; each reference shall be accompanied by the words ‘or equivalent’;

*Amendment*

(b) by reference to specifications and *standards, as defined in point 2 of Annex VIII, with preference given* to European and international standards, *and only in the absence thereof* to national standards; each reference shall be accompanied by the words ‘or equivalent’;

Or. en

**Amendment 72**  
**Proposal for a directive**  
**Article 40 – paragraph 3 – point c**

*Text proposed by the Commission*

(c) in terms of performance or functional requirements as referred to in point (a),

*Amendment*

(c) in terms of performance or functional requirements as referred to in point (a),

with reference to the technical specifications referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

with reference to the technical specifications **and standards** referred to in point (b) as a means of presuming conformity with such performance or functional requirements;

Or. en

**Amendment 73**  
**Proposal for a directive**  
**Article 40 – paragraph 3 – point d**

*Text proposed by the Commission*

(d) by reference to the technical specifications referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.

*Amendment*

(d) by reference to the technical specifications **and standards** referred to in point (b) for certain characteristics, and by reference to the performance or functional requirements referred to in point (a) for other characteristics.

Or. en

**Amendment 74**  
**Proposal for a directive**  
**Article 40 – paragraph 4**

*Text proposed by the Commission*

4. **Unless** justified by the subject-matter of the contract, technical specifications **shall not** refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production **with the effect of favouring or eliminating certain undertakings or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph 3 is not possible.** Such reference shall be accompanied by the words ‘or equivalent’.

*Amendment*

4. **When** justified by the subject-matter of the contract, technical specifications **may** refer to a specific make or source, **location of production** or a particular process, or to trade marks, patents, types or a specific origin or production. Such reference shall be accompanied by the words ‘or equivalent’.

**Amendment 75**  
**Proposal for a directive**  
**Article 40 – paragraph 5**

*Text proposed by the Commission*

5. Where a contracting authority uses the option of referring to the specifications referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in its tender by whatever appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

*Amendment*

5. Where a contracting authority uses the option of referring to the specifications **and standards** referred to in point (b) of paragraph 3, it shall not reject a tender on the grounds that the works, supplies and services tendered for do not comply with the specifications **and standards** to which it has referred, once the tenderer proves in its tender by whatever appropriate means, including the means of proof referred to in Article 42, that the solutions it proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

**Amendment 76**  
**Proposal for a directive**  
**Article 40 – paragraph 6 – subparagraph 1**

*Text proposed by the Commission*

Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard **transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those specifications** address the

*Amendment*

Where a contracting authority uses the option laid down in point (a) of paragraph 3 to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard, **where the criteria for that** standard address the performance or functional requirements which it has laid down.

performance or functional requirements which it has laid down.

Or. en

**Amendment 77**  
**Proposal for a directive**  
**Article 41 – title**

*Text proposed by the Commission*

*Amendment*

**Labels**

***Labels and certificates of a third party verified standard***

Or. en

**Amendment 78**  
**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

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

- (a) the requirements for the label ***and/or the certificate of a third party verified standard*** concern characteristics which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;
- (b) the requirements for the label ***and/or the certificate of a third party verified standard*** are drawn up on the basis of scientific information or based on other

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

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

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

objectively verifiable and non-discriminatory criteria and data;

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

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

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

Or. en

**Amendment 79**  
**Proposal for a directive**  
**Article 41 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. Where a ***third party verified standard does not fall within the definition set out in point 5a of Annex VIII because its criteria*** sets out requirements not linked to the subject-matter of the contract, contracting authorities may define the technical specification by reference to of the detailed specifications of that ***standard*** or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.

Or. en

**Amendment 80**  
**Proposal for a directive**  
**Article 41 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 81**  
**Proposal for a directive**  
**Article 44 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

***1. Public contracts may be subdivided into homogenous or heterogeneous lots.*** For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, ***where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.***

***1. With a view to maximising competition, and unless the subject-matter of the contract makes division on the basis of the nature of the services involved impossible, the contracting authority shall award the contract in separate lots.*** For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with Article 5, ***if the contract cannot be split into lots because its subject-matter makes division on the basis of the nature of the services involved impossible, the contracting authority shall***

provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.

Or. fr

**Amendment 82**  
**Proposal for a directive**  
**Article 44 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.

*Amendment*

Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only. ***They shall be free to set the number of lots, taking account, in particular, of the technical characteristics of the services to be provided, the structure of the economic sector in question and, where appropriate, the rules applicable to certain professions.***

Or. fr

**Amendment 83**  
**Proposal for a directive**  
**Article 44 – paragraph 2**

*Text proposed by the Commission*

2. Contracting authorities ***may, even where the possibility to tender for all lots has been indicated,*** limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots ***where the application of the chosen award criteria would result in the award to one tenderer***

*Amendment*

***2. Candidates may not submit different tenders for differing numbers of lots.*** Contracting authorities ***shall*** limit the number of lots that may be awarded to a tenderer, provided that the maximum number is stated in the contract notice or in the invitation to confirm interest. Contracting authorities shall determine and indicate in the procurement documents the objective and non-discriminatory criteria or rules for awarding the different lots.

*of more lots than the maximum number.*

Or. fr

**Amendment 84**  
**Proposal for a directive**  
**Article 44 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***In the procurement documents relating to information on lots, contracting authorities shall ask the tenderer to indicate in its tender any share of the contract he may intend to subcontract to third parties and any proposed subcontractors, per tendered lot, within the limit of three subsequent subcontracting levels, in accordance with Article 71.***

Or. en

**Amendment 85**  
**Proposal for a directive**  
**Article 54 – paragraph 1 – point b**

*Text proposed by the Commission*

*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.

(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 71.***

Or. en

**Amendment 86**  
**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 **shall** not award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with obligations **in the field of social and labour law or environmental law** established by Union **or national** legislation **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.

Or. en

**Amendment 87**  
**Proposal for a directive**  
**Article 54 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Where such laws do not apply, violations of other laws applying to the tenderer and which ensure an equivalent level of protection shall also provide a basis for exclusion.**

Or. en

**Amendment 88**  
**Proposal for a directive**  
**Article 54 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend the list in Annex XI, where necessary due to the conclusion of new international agreements or modification of existing international**

**deleted**

*agreements.*

Or. en

**Amendment 89**

**Proposal for a directive**

**Article 55 – paragraph 1 – subparagraph 1 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

*(ea) participation in exploitation of human trafficking and child labour covered by Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims<sup>1</sup>.*

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<sup>1</sup> *OJ L 101, 15.4.2011.*

Or. en

**Amendment 90**

**Proposal for a directive**

**Article 55 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

A contracting authority *may* exclude from participation in a public contract any economic operator if one of the following conditions is fulfilled:

A contracting authority *shall* exclude from participation in a public contract any economic operator if one of the following conditions is fulfilled:

Or. en

**Amendment 91**

**Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

a) where it is aware of any violation of

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.

obligations in the field of social and labour law or environmental law *established by Union or national legislation, of collective agreements applicable in the place where the work is performed or the service is provided*, 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.

Or. en

**Amendment 92**  
**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 *contracting authority has information as a result of an assessment carried out by itself or another contracting authority in accordance with Article 73a that 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.

Or. en

**Amendment 93**  
**Proposal for a directive**  
**Article 55 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*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*

*Amendment*

*deleted*

*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.*

Or. en

**Amendment 94**  
**Proposal for a directive**  
**Article 55 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. A contracting authority shall exclude from participation in a public contract any economic operator if one of the conditions set out in paragraphs 1, 2 or 3 is fulfilled in respect of a subcontractor proposed by the economic operator in accordance with Article 71.***

Or. en

**Amendment 95**  
**Proposal for a directive**  
**Article 55 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 96**  
**Proposal for a directive**  
**Article 55 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

For this purpose, the candidate or tenderer shall prove that it has compensated any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct. **Contracting authorities shall evaluate** the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority **considers the measures to be insufficient**, it shall state the reasons for its decision.

*Amendment*

For this purpose, the candidate or tenderer shall prove that it has compensated any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organisational and personal measures that are appropriate to prevent further criminal offences or misconduct, **including reporting and control systems and internal audit structures to monitor compliance. Evidence provided by the candidate or tenderer to this effect shall be sufficient to satisfy the contracting authorities that** the measures taken by the candidates and tenderers, **or, as appropriate, the reliability of its subcontractor, are sufficient to prevent further criminal offences or misconduct**, taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the contracting authority **is not satisfied**, it shall state the reasons for its decision.

Or. en

**Amendment 97**  
**Proposal for a directive**  
**Article 55 – paragraph 5**

*Text proposed by the Commission*

5. Member States shall ensure that contracting authorities **and economic operators** can easily obtain information and assistance with regard to the

*Amendment*

5. Member States shall ensure that contracting authorities can easily obtain information and assistance with regard to the application of this Article through the

application of this Article through the *liaison point provided for in Article 88.*

*single body, several bodies or administrative structures established or appointed to that effect in accordance with Articles 84 and 87. Member States shall also ensure that economic operators can easily obtain information and assistance with regard to the application of this Article through the administrative structures provided for in Article 87a.*

Or. en

#### **Amendment 98**

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

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

*Text proposed by the Commission*

*Amendment*

*(ca) compliance with rules and standards in the field of health and safety, social and labour law defined by Union and national legislation and by collective agreements which apply in the place where the work, service or supply is performed.*

Or. en

#### **Amendment 99**

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

##### **Article 56 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the contract to be awarded. All requirements shall be *related and strictly proportionate* to the subject-matter of the contract, taking into account the need to ensure genuine

Contracting authorities shall limit any conditions for participation to those that are appropriate to ensure that a candidate or tenderer has the legal and financial capacities and the commercial and technical abilities to perform the contract to be awarded. All requirements shall be *linked* to the subject-matter of the contract, taking into account the need to ensure genuine competition.

competition.

Or. en

**Amendment 100**  
**Proposal for a directive**  
**Article 56 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 101**  
**Proposal for a directive**  
**Article 56 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

***In procedures for awarding public contracts having as their object supplies requiring sitting or installation work, the provision of services or the execution of works, the ability of economic operators to provide the service or to execute the installation or the work may be evaluated with regard to their skills, efficiency,***

*Amendment*

***deleted***

*experience and reliability.*

Or. en

**Amendment 102**  
**Proposal for a directive**  
**Article 56 – paragraph 5 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Paragraphs 1, 2, 3, 4 and 5 of this Article shall apply to subcontracting procedures and subcontractors.***

Or. en

**Amendment 103**  
**Proposal for a directive**  
**Article 57 – paragraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

(d) they will be able, upon request and without delay, to provide the supporting documentation that contracting authorities have required in accordance with Articles 59, 60 and, where appropriate, Articles 61 and 63.

(d) they will be able, upon request and without delay, to provide the supporting documentation that contracting authorities have required in accordance with Articles 59, 60 and, where appropriate, Articles 61, **Article 62(1)** and **Article 63**.

Or. en

**Amendment 104**  
**Proposal for a directive**  
**Article 57 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

Before awarding the contract, the contracting authority shall require the tenderer to which it has decided to award the contract to submit the documentation in accordance with Articles 59 and 60 and,

Before awarding the contract, the contracting authority shall require the tenderer to which it has decided to award the contract to submit the documentation in accordance with Articles 59 and 60 and,

where appropriate, Article 61. The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 59, 60 and 61.

where appropriate, Article 61. The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Articles 59, 60 and 61 **and Article 62(1)**.

Or. en

**Amendment 105**  
**Proposal for a directive**  
**Article 57 – paragraph 3 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 106**  
**Proposal for a directive**  
**Article 59 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

The Commission shall be empowered to adopt delegated acts in accordance with Article 89 in order to modify Annex XIII due to technical progress or for administrative reasons. It shall also establish the standard form for the European Procurement Passport. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

The Commission shall be empowered to adopt delegated acts in accordance with Article 89 in order to modify Annex XIII due to technical progress or for administrative reasons. It shall also establish, ***by means of implementing acts***, the standard form for the European Procurement Passport. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

**Amendment 107**  
**Proposal for a directive**  
**Article 60 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 108**  
**Proposal for a directive**  
**Article 60 – paragraph 3**

*Text proposed by the Commission*

3. Evidence of the economic operators' technical abilities may be provided by one or more of the means listed in Annex XIV, part 2, according to the nature, quantity or importance, and use of the works, supplies or services.

*Amendment*

3. Evidence of the economic operators' technical abilities may be provided by one or more of the means listed in Annex XIV, part 2, according to the nature, quantity, **quality, sustainability** or importance, and use of the works, supplies or services.

Or. en

**Amendment 109**  
**Proposal for a directive**  
**Article 61 – title**

*Text proposed by the Commission*

Quality assurance standards and environmental management standards

*Amendment*

Quality assurance standards and **social and** environmental management standards

Or. en

**Amendment 110**  
**Proposal for a directive**  
**Article 61 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Contracting authorities may require the production of certificates drawn up by independent bodies attesting that the economic operator complies with rules and standards in the field of health and safety, social and labour law defined by Union and national legislation and by collective agreements which apply in the place where the work, service or supply is to be performed.**

Or. en

**Amendment 111**  
**Proposal for a directive**  
**Article 61 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 112**  
**Proposal for a directive**  
**Article 63 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

Information that can be deduced from registration on official lists or certification shall not be questioned without justification. With regard to the payment of social security contributions and taxes, an additional certificate *may* be required of any registered economic operator whenever a contract is to be awarded.

*Amendment*

Information that can be deduced from registration on official lists or certification shall not be questioned without justification. With regard to the payment of social security contributions and taxes, an additional certificate *shall* be required of any registered economic operator whenever a contract is to be awarded.

Or. en

**Amendment 113**  
**Proposal for a directive**  
**Article 63 – paragraph 7**

*Text proposed by the Commission*

***7. Economic operators from other Member States shall not be obliged to undergo such registration or certification in order to participate in a public contract.*** The contracting authorities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.

*Amendment*

7. The contracting authorities shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other equivalent means of proof.

Or. en

**Amendment 114**  
**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Without prejudice to national laws,

*Amendment*

Without prejudice to national laws,

regulations or administrative provisions concerning the remuneration of certain services, the criteria on which contracting authorities shall base the award of public contracts shall be ***one of the following***:

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

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

regulations or administrative provisions concerning the remuneration of certain services, the criteria on which contracting authorities shall base the award of public contracts shall be the most economically advantageous tender.

Or. en

**Amendment 115**  
**Proposal for a directive**  
**Article 66 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

***deleted***

Or. en

**Amendment 116**  
**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 advantageous tender referred to in 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, other criteria linked to the subject-matter of the public contract in question, such as:

**Amendment 117**  
**Proposal for a directive**  
**Article 66 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) life cycle process and life cycle characteristics;***

Or. en

**Amendment 118**  
**Proposal for a directive**  
**Article 66 – paragraph 2 – point a b (new)**

*Text proposed by the Commission*

*Amendment*

***(ab) socially sustainable production process***

Or. en

**Amendment 119**  
**Proposal for a directive**  
**Article 66 – paragraph 2 – point b**

*Text proposed by the Commission*

*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 **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;

(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 **shall** 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 120**  
**Proposal for a directive**  
**Article 66 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

**Amendment 121**  
**Proposal for a directive**  
**Article 66 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***Award criteria shall ensure the possibility of effective and fair competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified by the contracting authority in order to determine whether the tenderers meet the award criteria.***

**Amendment 122**  
**Proposal for a directive**  
**Article 66 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

**4. Award criteria shall not confer an unrestricted freedom of choice on the**

**4. Award criteria shall not confer an unrestricted freedom of choice on the**

contracting authority. *They shall ensure the possibility of effective competition and shall* be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.

contracting authority. *Award criteria used to identify the tender representing the most economically advantageous tender* shall:

*(a) be linked to the subject matter;*

*(b) be accompanied by requirements that allow the information provided by the tenderers to be effectively verified;*

*(c) ensure the possibility of effective competition.*

Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.

Or. en

**Amendment 123**  
**Proposal for a directive**  
**Article 66 – paragraph 5 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 124**  
**Proposal for a directive**  
**Article 67 – title**

*Text proposed by the Commission*

Life-cycle *costing*

*Amendment*

Life-cycle *considerations*

Or. en

**Amendment 125**  
**Proposal for a directive**  
**Article 68 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the tenderer is not able to provide the certificates and documents required pursuant to Articles 59, 60 *and* 61;

*Amendment*

(a) the tenderer is not able to provide the certificates and documents required pursuant to Articles 59, 60 *and* 61 *and Article 62(1)*;

Or. en

**Amendment 126**  
**Proposal for a directive**  
**Article 68 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

*(aa) the tenderer is unable to provide up to date information regarding the payment of social security contributions and taxes required before awarding the contract;*

Or. en

**Amendment 127**  
**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 **30 %** lower than the average price or costs of the remaining tenders

Or. en

**Amendment 128**  
**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*

***deleted***

Or. en

**Amendment 129**  
**Proposal for a directive**  
**Article 69 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) at least **five** tenders have been submitted.

*Amendment*

(c) at least **three** tenders have been submitted.

Or. en

**Amendment 130**  
**Proposal for a directive**  
**Article 69 – paragraph 2**

*Text proposed by the Commission*

2. Where tenders appear to be abnormally low for other reasons, contracting authorities **may** also request such explanations.

*Amendment*

2. Where tenders appear to be abnormally low for other reasons, contracting authorities **shall** also request such explanations.

**Amendment 131**  
**Proposal for a directive**  
**Article 69 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. The explanations referred to in paragraphs 1 and 2 **may** in particular relate to:

*Amendment*

3. The explanations referred to in paragraphs 1 and 2 **shall** in particular relate to:

Or. en

**Amendment 132**  
**Proposal for a directive**  
**Article 69 – paragraph 3 – point d**

*Text proposed by the Commission*

(d) compliance, ***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 or, where not applicable, with other provisions ensuring an equivalent level of protection;

*Amendment*

(d) compliance 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 or, where not applicable, with other provisions ensuring an equivalent level of protection;

Or. en

**Amendment 133**  
**Proposal for a directive**  
**Article 69 – paragraph 3 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) compliance with rules and standards in the field of health and safety, social and labour law laid down in Union and national legislation and by collective agreements which apply in the place***

*where the work, service or supply is to be performed.*

Or. en

**Amendment 134**  
**Proposal for a directive**  
**Article 69 – paragraph 3 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

*(db) compliance with subcontracting requirements set out in Article 71.*

Or. en

**Amendment 135**  
**Proposal for a directive**  
**Article 69 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

*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 in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.

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 *and national legislation and by collective agreements which apply in the place where the work, service or supply is performed*, in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.

Or. en

**Amendment 136**  
**Proposal for a directive**  
**Article 71 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 137**  
**Proposal for a directive**  
**Article 71 – paragraph 1 a (new)**

*Text proposed by the Commission*

***1a. Member States shall limit the possibility for a tenderer to sub-contract out any parts of the works or services to be performed or goods to be delivered to no more than three successive levels of sub-contracting.***

*Amendment*

Or. en

**Amendment 138**  
**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

*Amendment*

2. Member States **shall** 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.

arrangements concerning that mode of payment shall be set out in the procurement documents.

Or. en

**Amendment 139**  
**Proposal for a directive**  
**Article 71 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

3. Paragraphs 1 and 2 shall be without prejudice to the question of the *main contractor's* liability. *Member states shall provide for a system of joint and several liability down the sub-contracting chain. They shall ensure that the main contractor and any intermediate subcontractor which have violated fundamental rights, health and safety requirements or social and labour rules and standards as laid down in Union and national legislation and in collective agreements which apply in the place where the work, service or supply is performed, may be liable to make the payments due in relation to such violations, such as outstanding remuneration, taxes or social contributions, in addition to or in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.*

*Member States may provide for more stringent liability rules under national law.*

*The contracting authority in its contract with the main contractor, and the main contractor and any intermediate subcontractor in their contracts with their subcontractors, shall stipulate that in the event that they have reason to believe that their immediate subcontractor is violating the rules referred to in the second*

*subparagraph, the immediate subcontractor shall take immediate action to remedy the situation, and that, failing this, the contract concerned shall be terminated.*

Or. en

**Amendment 140**  
**Proposal for a directive**  
**Article 72 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below 10 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.

Or. en

**Amendment 141**  
**Proposal for a directive**  
**Article 73 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 73 a**

***Monitoring of contract performance***

***1. Contracting authorities may or may be required by Member States to monitor the performance of the contractor awarded the contract and, at appropriate stages***

*during the contract term, carry out an assessment of performance using a method 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 within a reasonable timeframe and to obtain judicial protection.*

*2. Where an assessment is carried out in accordance with paragraph 1 and an economic operator or a subcontractor appointed for that contract by the economic operator has been found to have shown significant or persistent deficiencies in the performance of any substantive requirement under the contract and the economic operator has not objected to the findings or the economic operator's objections have not been validated through seeking judicial protection, the contracting authority shall communicate the fact and the necessary detail of the such an assessment to the supervisory and administrative authorities as referred to in Articles 84 and 88.*

*3. Member States shall ensure that contracting authorities can easily obtain information and assistance with regard to the application of this Article through the assistance provided by supervisory and administrative authorities as mentioned in Articles 84, 87 and 88.*

Or. en

**Amendment 142**  
**Proposal for a directive**  
**Article 75 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

*1. Contracting authorities intending to*

*deleted*

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

Or. en

**Amendment 143**  
**Proposal for a directive**  
**Article 76 – paragraph 2**

*Text proposed by the Commission*

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.*

*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 *as well as consumer protection and social inclusion.*

*Contracting authorities shall ensure that, for the choice of the service provider, due account is given to social standards and considerations in accordance with point 22b of Article 2 and Articles, 40, 54, 55, 56 and 71.*

*When choosing the service provider, contracting authorities shall consider using reserved contracts as provided for in Article 17.*

Or. en

**Amendment 144**  
**Proposal for a directive**  
**Article 77 – paragraph 2 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) by reference to the territory or part of the territory of a Member State;**

**deleted**

Or. en

**Amendment 145**  
**Proposal for a directive**  
**Article 84 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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

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

***In those Member States where an oversight body already exists, the Member States shall confer to it the performance of the responsibilities described in this Article.***

Or. en

**Amendment 146**  
**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 **and monitoring** systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest, other serious irregularities **as well as specific breaches of provisions contained in Articles 54, 55**

*and 71;*

Or. en

**Amendment 147**  
**Proposal for a directive**  
**Article 87 – title**

*Text proposed by the Commission*

Assistance to contracting authorities ***and businesses***

*Amendment*

Assistance to contracting authorities

Or. en

**Amendment 148**  
**Proposal for a directive**  
**Article 87 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions.

*Amendment*

1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions, ***in particular in relation to provisions contained in Articles 54, 55 and 71.***

Or. en

**Amendment 149**  
**Proposal for a directive**  
**Article 87 – paragraph 2**

*Text proposed by the Commission*

***2. With a view to improving access to***

*Amendment*

***deleted***

*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.*

Or. en

**Amendment 150**  
**Proposal for a directive**  
**Article 87 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

*Specific administrative assistance shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such assistance shall at least cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.* **deleted**

Or. en

**Amendment 151**  
**Proposal for a directive**  
**Article 87 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection, and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be* **deleted**

*provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract.*

Or. en

**Amendment 152**  
**Proposal for a directive**  
**Article 87 – paragraph 4**

*Text proposed by the Commission*

4. For the purposes of *paragraphs 1, 2 and 3*, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.

*Amendment*

4. For the purposes of *paragraph 1*, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.

Or. en

**Amendment 153**  
**Proposal for a directive**  
**Article 87 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 87 a*

*Information to economic operators*

*In order to facilitate correct understanding of the provisions of this Directive, Member States shall ensure that appropriate information can be obtained, including by electronic means or using existing networks dedicated to business assistance.*

*Specific information shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such information shall at least cover administrative requirements in the Member State*

*concerned, as well as possible obligations relating to electronic procurement.*

*Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection, and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract.*

Or. en

**Amendment 154**  
**Proposal for a directive**  
**Article 89 – paragraph 2**

*Text proposed by the Commission*

2. The delegation of power referred to in Articles 6, 13, 19, 20, 23, 54, 59, 67 and 86 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of the present Directive].

*Amendment*

2. The delegation of power referred to in Articles 6, 13, 19, 20, 23, 59, 67 and 86 shall be conferred on the Commission for an indeterminate period of time from the [date of entry into force of the present Directive].

Or. en

**Amendment 155**  
**Proposal for a directive**  
**Annex VIII – point 1**

*Text proposed by the Commission*

*(1) "technical specification" means one of the following:*

*(a) in the case of public works contracts the totality of the technical prescriptions*

*Amendment*

*deleted*

*contained in particular in the procurement documents, defining the characteristics required of a material, product or supply, so that it fulfils the use for which it is intended by the contracting authority; those characteristics include levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions and production processes and methods at any stage of the life cycle of the works; those characteristics also include 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;*

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

**Amendment 156**  
**Proposal for a directive**  
**Annex VIII – paragraph 1 – point 2**

*Text proposed by the Commission*

(2) "standard" means a **technical** specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:

- (a) international standard: a standard adopted by an international standards organisation and made available to the general public,
- (b) European standard: a standard adopted by a European standards organisation and made available to the general public,
- (c) national standard: a standard adopted by a national standards organisation and made available to the general public;

*Amendment*

(2) "standard" means

- (a) a specification approved by a recognised standardising body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
  - (i) international standard: a standard adopted by an international standards organisation and made available to the general public,
  - (ii) European standard: a standard adopted by a European standards organisation and made available to the general public,
  - (iii) national standard: a standard adopted by a national standards organisation and made available to the general public;
- (b) **European technical approvals;**
- (c) **a common technical specification;**
- (d) **a technical reference; or**
- (e) **third party verified standard and certification.**

**Amendment 157**  
**Proposal for a directive**  
**Annex VIII – paragraph 1 – point 3**

*Text proposed by the Commission*

*Amendment*

**(3) "European technical approval" means a favourable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;** *deleted*

Or. en

**Amendment 158  
Proposal for a directive  
Annex VIII – paragraph 1 – point 4**

*Text proposed by the Commission*

*Amendment*

**(4) "Common technical specification" means a technical specification laid down in accordance with a procedure recognised by the Member States or in accordance with Articles 9 and 10 of Parliament and Council Regulation [XXX] on European standardisation [and amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/105/EC and 2009/23/EC of the European Parliament and the Council] which has been published in the Official Journal of the European Union;** *deleted*

Or. en

**Amendment 159  
Proposal for a directive  
Annex VIII – paragraph 1 – point 5**

*Text proposed by the Commission*

*Amendment*

**(5) "Technical reference" means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs.**

*deleted*

Or. en

**Amendment 160  
Proposal for a directive  
Annex VIII – paragraph 1 – point 5 a (new)**

*Text proposed by the Commission*

*Amendment*

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

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

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

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

**(iv) are set by a third party which is independent from any economic operator**

*applying for the verification of compliance.*

Or. en

#### **Amendment 161**

##### **Proposal for a directive Annex XI - indent 3 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### **Amendment 162**

##### **Proposal for a directive Annex XIII – point b a (new)**

*Text proposed by the Commission*

*Amendment*

**(ba) Certification that the economic operator is not the subject of a decision having the force of res judicata, as referred to in Article 55(1);**

Or. en

#### **Amendment 163**

##### **Proposal for a directive Article XIII – point c a (new)**

*Text proposed by the Commission*

*Amendment*

**(ca) Certification that the economic operator has not violated any of the obligations listed in 55(3);**

**Amendment 164**

**Proposal for a directive  
Annex XIII - point c b (new)**

*Text proposed by the Commission*

*Amendment*

***(cb) Certification that the issuing authority is not aware that the economic operator is in one of the situations listed in Article 55;***

Or. en

**Amendment 165  
Proposal for a directive  
Annex XIV – Part II – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(ea) appropriate certificates or statements relating to evidence of respect of social and labour law rules and standards as defined by Union and national legislation and by collective agreements which apply in the place where the work, service or supply is to be performed;***

Or. en

**Amendment 166  
Proposal for a directive  
Annex XIV – Part II – point f a (new)**

*Text proposed by the Commission*

*Amendment*

***(fa) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;***



## EXPLANATORY STATEMENT

In the view of the rapporteur, the modernisation of the public procurement directives should strike a balance between simplification of the rules on the one hand, and sound, effective procedures linked to innovative, sustainable award criteria on the other hand, while also ensuring greater participation by SMEs, and making e-procurement the general rule.

The aim should be to fully exploit the potential of public procurement within the Single Market in order to foster sustainable growth, employment and social inclusion. In the light of the fact that public procurement contracts constitute a significant share of the economy (around 19% of EU GDP), the successful revision and enforcement of public procurement rules would considerably help in re-launching investments in the real economy and overcoming the crisis of the European economy.

The rapporteur welcomes the Commission proposals and considers that they contain some interesting new principles and ideas. They need however to be improved to achieve the best result possible. A more detailed consideration of the rapporteur's proposals may be found in the working document of 23 February 2012 (PE 483.690) drawn up by the rapporteur upstream of this draft report.

### ▪ **Effective and socially sustainable public procurement**

The rapporteur considers that the Commission proposal does not go far enough, particularly on social aspects. He therefore wishes to ensure compliance with social standards at all stages of the public procurement procedure.

Accordingly the rapporteur goes into greater detail on the **technical specifications** which are set out in the tendering documents and define the features which the works, services or supplies must possess, so as to enable the contracting authority to achieve sustainability objectives if it so wishes. The technical specifications should therefore be permitted to include requirements concerning: performance (e.g. environmental performance); the organisation, qualifications and experience of the workers entrusted with implementing the contract; safety, particularly methods for evaluating the quality of products, packaging and instructions for use; life cycle; and features relating to the socially sustainable production process.

The concept of a **socially sustainable production process** devised by the rapporteur, which is also present in the award criteria, is defined as the production process linked to the subject-matter of the contract, whether it be a contract for supplies, works or services, that ensures respect for the health and safety of workers and for social standards. The social criteria linked to this socially sustainable production process will refer to social standards defined and certified in accordance with national and European law and by collective agreements.

The rapporteur also reinforces the **grounds for exclusion** by requiring the exclusion from public procurement contracts of any economic operator which has breached its obligations under social, labour and gender equality law as defined by national and European legislation and collective agreements. Similarly, the contracting authorities may not award the contract

to the tenderer making the best bid if the economic operator in question is unable to provide up-to-date information on the payment of his social security contributions.

Concerning the **selection criteria**, the rapporteur wishes contracting authorities to be able to establish participation conditions that are also linked to compliance with workers' health and safety standards and with social and labour legislation as defined by national and European law and by collective agreements.

Finally, at the **award criteria** stage for public procurement contracts, the rapporteur considers that the notion of the 'lowest price' should finally be scrapped in favour of that of the 'most economically advantageous tender' (MEAT). Given that price is also taken into account in the MEAT, this would allow contracting authorities to make the most appropriate choices in relation to their specific needs, including the consideration of strategic societal aspects, social criteria – particularly social and labour rights, working conditions, health and safety at the workplace, and access to employment for disadvantaged persons, young persons, women, older workers and the long-term unemployed – environmental criteria and, in particular, fair trade. As has been mentioned, the notion of a socially sustainable production process is included in the evaluation of the most economically advantageous tender. Furthermore, the definition of the life cycle must also include a reference to the place of production. The European Union should be able to give preference to local producers, in particular SMEs, when awarding public procurement contracts in certain specific cases. Besides promoting sustainable development and preserving local and regional production, this provision would enable contracting authorities to be provided with a tool for alleviating the local impact of the economic crisis.

However, it is worth mentioning that for reasons of efficiency and legal security, none of the award criteria should give total freedom of choice to the contracting authority: the award criteria selected for determining the most economically advantageous tender should always be linked to the subject-matter of the contract and should ensure the possibility of effective competition.

In order to ensure that public procurement contracts are implemented effectively, the Member States should also have the option of requiring contracting authorities to check the performance of the economic operator awarded the contract.

▪ **Healthy sub-contracting to ensure effective participation of SMEs**

The rapporteur supports sub-contracting where it permits the development of SMEs. However, there have been some alarming cases where the practice of 'cascade sub-contracting' has led to the exploitation of workers and thus to lower-quality public procurement contracts. It is in the interests of everyone, undertakings as well as contracting authorities, to ensure that the work carried out in the performance of public procurement contracts is of high quality and complies with labour law. Accordingly the rapporteur proposes that cascade sub-contracting should be restricted by imposing a limit of no more than three consecutive sub-contractors. He also proposes introducing the principle of responsibility throughout the sub-contracting chain so that all stages in the process bear responsibility for respecting fundamental rights and complying with health and safety of workers and current labour laws.

Furthermore, the contracting authority must ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties, and the proposed subcontractors.

The provisions concerning abnormally low bids should also be tightened to avoid any possibility of sub-contracting that does not comply with labour law.

The rapporteur supports the Commission's proposal to make e-procurement the general rule. This will facilitate and encourage SME participation. However, he wishes to retain the current submission deadlines under Directive 2004/18. He considers that the effect of a minimum deadline is necessary to ensure that tenderers, particularly SMEs, are able to draw up an adequate tender.

The rapporteur also supports the creation of the e-passport, which will undoubtedly facilitate participation by SMEs.

▪ **Simplifying public procurement for contracting authorities**

The rapporteur draws particular attention to the contracting authorities which will be responsible for applying the provisions of the forthcoming directive on public procurement. Accordingly he is keen not to make their task any harder, and to enable them to complete public procurement contracts effectively and in the best interests of their local area.

The rapporteur therefore considers it essential for all the procedures laid down in the directive to be transposed in the Member States: each contracting authority should have at its disposal a toolbox to enable it to choose the procedure best suited to its needs. The rapporteur considers it desirable that greater use should be made in future of the negotiated procedure.

Moreover, the rapporteur considers that the Member States should provide contracting authorities with the technical and financial resources they need to adapt to e-procurement and to prepare their calls for tender.

The rapporteur also wishes to improve flexibility in the relations between public authorities proposed by the Commission. The Commission codifies current case law in quite a restrictive manner: consequently, local authorities will have their room for manoeuvre considerably reduced, at the expense of the overall efficiency of public procurement. The rapporteur therefore provides for exceptions to the principle of a total ban on private participation, while insisting on the need to pursue the general interest.

The rapporteur supports the Commission's proposal seeking to end the distinction between priority and non-priority services. He considers it appropriate to create a special scheme for social services, given their specific characteristics and in order to guarantee the strategic use of public procurement, but wishes to make the scheme less stringent by removing the requirement for ex-ante publication, while stressing the need to comply with the principles of transparency and equal treatment.

As regards the national governance authority, the rapporteur considers that it is important for each Member State to have an authority responsible for the proper operation of public

procurement. However, he wishes to avoid any additional administrative burden which might slow down the work of the contracting authorities. Accordingly he considers that, in those Member States that already possess such an authority, the latter should be given new responsibilities.