



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2011/0438(COD)

12.7.2012

AMENDMENTS 1062 - 1351

Draft report

Marc Tarabella

(PE483.468v01-00)

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

Proposal for a directive

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

Amendment 1062
Andreas Schwab, Jürgen Creutzmann

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point d

Text proposed by the Commission

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

Amendment

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

Or. de

Amendment 1063
Sergio Gaetano Cofferati

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point d

Text proposed by the Commission

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

Amendment

(d) where the economic operator ***is inscribed in an official register of non-compliance, as set out in Article 73a.***

Or. en

Amendment 1064
Anna Hedh

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point d

Text proposed by the Commission

(d) where the economic operator has

Amendment

(d) where the economic operator has

shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature *with the same contracting authority*.

shown significant or persistent deficiencies in the performance of any substantive requirement under a prior contract or contracts of a similar nature.

Or. en

Justification

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

Amendment 1065
Cristian Silviu Buşoi

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point d

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

There is a risk that an economic operator who has not fulfilled his contractual obligations with one contracting authority may do the same with another one. Contracting authorities should be able to avoid this should they be aware of such deficiencies.

Amendment 1066
António Fernando Correia de Campos

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) where the economic operator has been involved in conducting or providing studies, advice, and consultations as referred to in Article 39(1).

Or. pt

Amendment 1067
Monica Luisa Macovei

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) where a conflict of interests could not have been effectively remedied as stipulated by Article 21(3);

Or. en

Amendment 1068
Monica Luisa Macovei

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) where the economic operator does not provide appropriate ownership information, including on its subcontractors.

Or. en

Amendment 1069
Heide Rühle

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

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

Or. en

Justification

It is up to the Member States to provide such a method small contracting authorities are unable to do so.

Amendment 1070
Peter Simon

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

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

Amendment 1071
Sergio Gaetano Cofferati

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 1072
Andreas Schwab, Jürgen Creutzmann

Proposal for a directive
Article 55 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

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

In order to apply the ground for exclusion referred to in point (d) of the first subparagraph, contracting authorities must prove that a final court judgment for deficient performance has been handed down against the economic operator or that the economic operator has issued a declaration of acknowledgement of deficient performance.

Justification

The arrangements laid down in Article 55(3)(d) would give rise to the possibility of arbitrary decisions and avoidable disputes if the wording of the relevant legal provision did not require the contracting authority to obtain proof justifying exclusion. For example, the contracting authority could be required to submit a copy of a judgment for deficient performance handed down against the contractor or a declaration of acknowledgement of deficient performance issued by the contractor itself. The deficient performance would also have to be the result of negligence.

Amendment 1073

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

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

Text proposed by the Commission

Amendment

1. 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. **deleted**

Justification

Giving candidate or tenderer such a possibility may significantly prolong and complicate the procedure, as theoretically any decision of contracting authority with regard to selection of candidates may be challenged that way. What is more, such a self-cleaning procedure creates additional administrative burden for the contracting authority, as it is assigned an additional task to evaluate the measures taken by the candidates and tenderers taking into account the gravity and particular circumstances of the criminal offence or misconduct.

Amendment 1074

Lara Comi

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

Text proposed by the Commission

Amendment

1. 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.

deleted

Or. it

Amendment 1075

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 55 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

1. 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.

1. Any candidate, tenderer **or subcontractor** 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.

Or. de

Amendment 1076

Salvatore Iacolino

Proposal for a directive

Article 55 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 1077

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

Proposal for a directive

Article 55 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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. 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.

deleted

Or. en

Amendment 1078

Lara Comi

Proposal for a directive

Article 55 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

deleted

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.

Or. it

Amendment 1079
Evelyne Gebhardt, Birgit Sippel

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, tenderer *or subcontractor* 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, tenderers *or subcontractors* 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.

Or. de

Amendment 1080
Heide Rühle

Proposal for a directive
Article 56 – paragraph 1 – subparagraph 2

Text proposed by the Commission

They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, but they shall not provide requirements other than those listed.

Amendment

They are not obliged to impose all the conditions listed in paragraphs 2, 3 and 4, but they shall not provide requirements other than those listed, ***except in duly justified circumstances related to the special risks attached to the very nature of the works, services or supplies.***

Or. en

Amendment 1081
Frank Engel

Proposal for a directive
Article 56 – paragraph 1 – subparagraph 3

Text proposed by the Commission

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 competition.

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. ***Consequently, in no case can a tender be rejected solely because it does not include a reference to previous contracts. This criterion can be used as an additional element in the evaluation.***

All requirements shall be related and strictly proportionate to the subject-matter of the contract, taking into account the need to ensure genuine competition.

Or. fr

Amendment 1082
Robert Rochefort

Proposal for a directive
Article 56 – paragraph 1 – subparagraph 3

Text proposed by the Commission

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 competition.

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. ***Consequently, in no case can a tender be rejected solely because it does not include a reference to previous contracts.*** All requirements shall be related and strictly proportionate to the subject-matter of the contract, taking into account the need to ensure genuine competition.

Or. fr

Amendment 1083
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 56 – paragraph 3 – subparagraph 1

Text proposed by the Commission

1. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

Amendment

1. Contracting authorities shall not require that economic operators have a certain minimum yearly turnover, ***except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents. In this case, the minimum yearly turnover shall not exceed two times the estimated*** contract.

Or. en

Amendment 1084

Lara Comi

Proposal for a directive

Article 56 – paragraph 3 – subparagraph 1

Text proposed by the Commission

1. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

Amendment

1. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover **during at least the past five years**, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

Or. it

Amendment 1085

Cristian Silviu Buşoi

Proposal for a directive

Article 56 – paragraph 3 – subparagraph 1

Text proposed by the Commission

1. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

Amendment

1. With regard to sufficient economic and financial standing, contracting authorities may require economic operators to have adequate financial and economic capacity. For that purpose, they may require that economic operators have a certain minimum yearly turnover **for the last 3 years**, including a certain minimum turnover in the area covered by the contract and an adequate professional risk indemnity insurance.

Or. en

Justification

It should be avoided that contracting authorities impose a minimum yearly turnover requirement for a too long period, which may limit the participation of economic operators.

Amendment 1086

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 56 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

The minimum yearly turnover shall not exceed three times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

deleted

Or. en

Amendment 1087

Frank Engel, András Gyürk, Ildikó Gáll-Pelcz

Proposal for a directive

Article 56 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

The minimum yearly turnover shall not exceed three times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

The minimum yearly turnover shall not exceed the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

Or. fr

Amendment 1088

Lara Comi

Proposal for a directive

Article 56 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The minimum yearly turnover shall not exceed three times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

Amendment

The *aforesaid* minimum yearly turnover shall not exceed three times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

Or. it

Amendment 1089

Cristian Silviu Buşoi

Proposal for a directive

Article 56 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The minimum yearly turnover shall not exceed *three* times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

Amendment

The minimum yearly turnover shall not exceed *two* times the estimated contract value, except in duly justified circumstances relating to the special risks attached to the nature of the works, services or supplies. The contracting authority shall indicate such exceptional circumstances in the procurement documents.

Or. en

Justification

The minimum level of turnover required should not be too high in order not to excessively limit the number of economic operators participating in the award procedure.

Amendment 1090
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 56 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Where a contract is divided into lots this Article shall apply in relation to each individual lot. ***However, the contracting authority may set the minimum yearly turnover by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.***

Amendment

Where a contract is divided into lots this Article shall apply in relation to each individual lot.

Or. en

Amendment 1091
Lara Comi

Proposal for a directive
Article 56 – paragraph 3 – subparagraph 3

Text proposed by the Commission

Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the contracting authority may set the minimum yearly turnover by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.

Amendment

Where a contract is divided into lots this Article shall apply in relation to each individual lot. However, the contracting authority may set the ***aforsaid*** minimum yearly turnover by reference to groups of lots for the event that the successful tenderer is awarded several lots to be executed at the same time.

Or. it

Amendment 1092
Andreas Schwab

Proposal for a directive
Article 56 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. 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

4. 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.

Or. de

Justification

It is not clear to what extent ‘conflicting interests’ within the meaning of the second sentence could hamper performance of the contract. What is more, it should not be for the contracting authority alone to determine what constitute ‘conflicting interests’.

Amendment 1093

Vicente Miguel Garcés Ramón

Proposal for a directive

Article 57 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) they comply with the applicable rules concerning the integration of people with disabilities into the workforce in each Member State;

Or. es

Amendment 1094

Pablo Arias Echeverría

Proposal for a directive
Article 57 – paragraph 2 – subparagraph 1

Text proposed by the Commission

1. A contracting authority *may ask* a candidate or tenderer at any moment during the procedure to submit all or parts of the required documentation where this appears necessary to ensure the proper conduct of the procedure.

Amendment

1. A contracting authority *shall require* a candidate or tenderer at any moment during the procedure to submit all or parts of the required documentation where this appears necessary to ensure the proper conduct of the procedure.

Or. es

Amendment 1095
Anja Weisgerber, Hans-Peter Mayer, Andreas Schwab

Proposal for a directive
Article 57 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. An extension may be granted for the submission of declarations and proof requested by the contracting authority which were not provided by the deadline for submitting tenders.

Or. de

Justification

In formal procedures it should be possible to make minor changes or improvements to tenders. Contracting authorities would then be able to ask undertakings to provide missing supporting documents. In the absence of such a rule, a contracting authority would automatically be forced to exclude even what it knows is the most economically advantageous tender from a known, suitable undertaking because only one supporting document requested by the contracting entity to prove the undertaking's suitability is missing.

Amendment 1096
Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 57 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Candidates and tenderers shall not be required to re-submit a certificate or other documentary evidence that has already been submitted to the same contracting authority within the past four years in an earlier procedure and is still valid.

deleted

Or. en

Justification

Accepting self-declarations as a preliminary evidence in the procedure is a good way to facilitate access of SMEs to public contracts. However, it should not obstruct a balance between obligations or rights of parties to the procedure. Public authorities should have a possibility to verify whether a candidate fulfils requirements. In particular, contracting authority shall have the right to ask tenderers or candidates to submit up-to-date certificates even in the case where they have submitted them to the same contracting authority in the past four years. It is essential for a contracting authority to have up-to-date information about qualifications of the candidate in question.

Amendment 1097
Heide Rühle

Proposal for a directive
Article 57 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Candidates and tenderers shall not be required to re-submit a certificate or other documentary evidence that has already been submitted to the same contracting authority within the past **four** years in an earlier procedure and is still valid.

Candidates and tenderers shall not be required to re-submit a certificate or other documentary evidence that has already been submitted to the same contracting authority within the past **two** years in an earlier procedure and is still valid. ***The contracting authority is however entitled to demand more recent evidence in case of questionable validity during the procedure.***

Or. en

Amendment 1098
Heide Rühle

Proposal for a directive
Article 58 – paragraph 2

Text proposed by the Commission

2. Recourse to e-Certis shall become obligatory and contracting authorities shall be obliged to require only such of types of certificates or forms of documentary evidence that are available in e-Certis at the latest 2 years after the date provided for in Article 92(1).

Amendment

2. Recourse to e-Certis shall become obligatory and contracting authorities shall be obliged to require only such of types of certificates or forms of documentary evidence that are available in e-Certis at the latest 2 years after the date provided for in Article 92(1) ***except in duly justified circumstances related to the special risks attached to the very nature of the works, services or supplies.***

Or. en

Amendment 1099

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

Proposal for a directive
Article 59

Text proposed by the Commission

Article 59

European Procurement Passport

1. National authorities shall issue, at the request of an economic operator established in the relevant Member State and fulfilling the necessary conditions, a European Procurement Passport. The European Procurement Passport shall contain the particulars set out in Annex XIII and shall be drawn up on the basis of a standard form.

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

Amendment

deleted

European Procurement Passport. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.

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

3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data.

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than six months earlier.

5. Member States shall make available to other Member States, upon request, any information relating to the authenticity and content of the European Procurement Passport. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 88.

Or. en

Justification

It would be enough to accept Passports issued by other Member States, just as it is now in the case of official lists of approved economic operators or their certification as provided for in Article 52 of Directive 2004/18. It is not clear why Passport should be mandatory, official lists and certification being facultative. Added value of the provision is questionable: where contracting authorities are obliged to accept self-declaration as preliminary evidence that candidates fulfil selection criteria, it is pointless to introduce additional kind of documentation such as European Procurement Passport.

**Amendment 1100
Lara Comi**

Proposal for a directive
Article 59 – paragraph 2

Text proposed by the Commission

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

Amendment

2. At the latest **4** years after the date provided for in Article 92(1), the passport shall be provided exclusively in electronic form.

Or. it

Amendment 1101

Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen, Sirpa Pietikäinen, Jürgen Creutzmann, Anna Maria Corazza Bildt

Proposal for a directive
Article 59 – paragraph 3

Text proposed by the Commission

3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data.

Amendment

3. The authority issuing the passport shall seek the relevant information directly from the competent authorities, except where prohibited by national rules on the protection of personal data ***and except where the information can only be gathered from the economic operator itself. In these cases, the economic operator must deliver the information to the authority to obtain the Public Procurement Passport.***

Or. en

Justification

A Public Procurement Passport will lower the transaction costs in public procurement procedures but should contain more information than what can be gathered by authorities themselves. They must ask the economic operator for information that cannot be gathered elsewhere.

Amendment 1102
Morten Løkkegaard, Jens Rohde

Proposal for a directive
Article 59 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Procurement Passport shall include the information listed in Annex XIII and a declaration of honour that the economic operator has not undertaken and will not undertake to:

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

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

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

The Procurement Passport must be signed by the economic operator; hereby guaranteeing the validity of the information in the Procurement Passport.

Or. en

Amendment 1103
Heide Rühle

Proposal for a directive
Article 59 – paragraph 4

Text proposed by the Commission

Amendment

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without

justification. Such justification may be related to the fact that the passport was issued more than six months earlier.

justification. Such justification may be related to the *very nature of the individual case or the* fact that the passport was issued more than six months earlier. *In such cases the Contracting Authority is entitled to demand more recent or divergent types of certificates.*

Or. en

Amendment 1104

Andreas Schwab, Sirpa Pietikäinen, Anna Maria Corazza Bildt

Proposal for a directive

Article 59 – paragraph 4

Text proposed by the Commission

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than *six months* earlier.

Amendment

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than *one year* earlier.

Or. en

Justification

The Public Procurement Passport should be issued for one year. Economic information in the passport will reflect annual accounts of the company and avoid repetition of data every six months. With respect to the validity of the information provided in the passport, i.e. in relations to public sector debt, the economic operator has to provide a declaration of honour according to Article 22 (c) that it has not and will not undertake to deliberately provide misleading information.

Amendment 1105

Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

Proposal for a directive

Article 59 – paragraph 4

Text proposed by the Commission

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than *six months* earlier.

Amendment

4. The European Procurement Passport shall be recognised by all contracting authorities as proof of fulfilment of the conditions for participation covered by it and shall not be questioned without justification. Such justification may be related to the fact that the passport was issued more than *one year* earlier.

Or. en

Amendment 1106
Sirpa Pietikäinen

Proposal for a directive
Article 59 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Tenderers may be excluded from the European Procurement Passport due to failures in paying social contributions, or where the economic operator has been convicted by a final judgement of any offence affecting his professional conduct or has been guilty of grave professional misconduct.

Or. en

Amendment 1107
Sirpa Pietikäinen

Proposal for a directive
Article 60 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

2. 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.

2. Proof of the economic operator's economic and financial standing ***as well as compliance with rules and standards in the field of animal welfare***, may, as a

general rule, be provided by one or more of the references listed in Annex XIV, part 1.

Or. en

Amendment 1108
Heide Rühle

Proposal for a directive
Article 60 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. A contracting authority shall request the tenderers or candidates to provide evidence that they have taken into account, when drawing up their tender, the obligations relating to employment protection provisions and the working conditions which are in force in the place where the works are to be carried out or the service is to be provided.

Or. en

Justification

Identical with the provisions in Article 27 (2) of the recent general procurement directive 2004/18/EC. No reason to delete this provision with its useful clarification.

Amendment 1109
Sirpa Pietikäinen

Proposal for a directive
Article 61 – title

Text proposed by the Commission

Amendment

Quality assurance standards and environmental management standards

Quality assurance standards and ***social, environmental and animal welfare*** management standards

Or. en

Amendment 1110

Ivo Belet

Proposal for a directive

Article 61 – paragraph 1

Text proposed by the Commission

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Amendment

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, ***social and solidarity economy and ethical trade requirements***, contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Or. en

Amendment 1111

Catherine Stihler

Proposal for a directive

Article 61 – paragraph 1

Text proposed by the Commission

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, contracting authorities shall refer to quality assurance systems

Amendment

1. Where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, ***social and solidarity economy and ethical trade requirements***,

based on the relevant European standards series certified by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

contracting authorities shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies *or multi-stakeholder third-party verified organisational assurance schemes*. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Or. en

Justification

It is entirely legitimate for a contracting authority to ask potential tenderers for information on how they intend to meet the aims of the contract which it has laid down. As already recognized by the Commission in its Communication on "The role of Fair Trade and non-governmental trade-related sustainability assurance schemes" (COM (2009) 215) private, multi-stakeholder, third-party verified organisational assurance schemes are robust enough and a useful tool to contracting authorities.

Amendment 1112 **Heide Rühle**

Proposal for a directive **Article 61 – paragraph 2**

Text proposed by the Commission

2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council⁴¹ or other

Amendment

2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council⁴¹ or other

environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits. ***In order not to discriminate those tenderers who invest time and money for certificates or test reports, the burden for providing equivalence should be placed on the tenderer claiming equivalence.***

Or. en

Amendment 1113
Christel Schaldemose

Proposal for a directive
Article 61 – paragraph 2

Text proposed by the Commission

2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council⁴¹ or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic

Amendment

2. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme (EMAS) or to other environmental management schemes as recognized in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council⁴¹ or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. ***For services this may be Ecolabel certificates which also include environmental management criteria.*** They

operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

shall also accept other evidence of equivalent environmental management measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

Or. en

Amendment 1114
Matteo Salvini, Francesco Enrico Speroni

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

Text proposed by the Commission

Amendment

2a. Where contracting authorities require the production of certificates or corresponding evidence drawn up by independent bodies attesting that the economic operator complies with certain management schemes or standards concerning working conditions along the supply chain related to the International Labour Organization (ILO) Conventions listed in Annex XI, the contracting authorities shall refer to participation in multi-stakeholder initiatives in which businesses, trades unions and/or relevant nongovernmental organizations are represented. The multi-stakeholder initiatives shall have a system of independent verification of members to ensure compliance with the provisions of Annex XI.

Or. en

Amendment 1115
Heide Rühle

Proposal for a directive
Article 61 – paragraph 3

Text proposed by the Commission

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.

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, **social** and environmental standards referred to in paragraphs 1 and 2 of this Article.

Or. en

Amendment 1116
Sirpa Pietikäinen

Proposal for a directive
Article 61 – paragraph 3

Text proposed by the Commission

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.

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, **social, environmental and animal welfare** standards referred to in paragraphs 1 and 2 of this Article.

Or. en

Amendment 1117
Lara Comi

Proposal for a directive
Article 62 – paragraph 2

Text proposed by the Commission

2. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, contracting authorities may

Amendment

deleted

require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a group of economic operators as referred to in Article 6, a participant in the group.

Or. it

Amendment 1118
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 63 – paragraph 1 – subparagraph 2

Text proposed by the Commission

*They shall inform the Commission and the other Member States of the address of the certification body or the body responsible for the official **lists, to which applications shall be sent.***

Amendment

Upon their request, they** shall inform the Commission and the other Member States of the address of the certification body or the body responsible for the official **list.

Or. en

Amendment 1119
Monica Luisa Macovei

Proposal for a directive
Article 63 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Member States shall publish online and regularly update the list of economic operators excluded for participation in a public contract on the grounds stipulated in Article 55(1), (2) and (3).

Amendment

Or. en

Amendment 1120
Marc Tarabella

Proposal for a directive
Article 63 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. The contracting authority may perform the qualitative selection on the basis of a system for marking and ranking candidates, which may be used in the final ranking of tenders.

Or. fr

Amendment 1121
Marc Tarabella

Proposal for a directive
Article 64 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

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

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

Or. fr

Amendment 1122
Marc Tarabella

Proposal for a directive
Article 64 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

1. In the restricted procedure the minimum number of candidates shall be five. In the competitive procedure with negotiation, ***in the competitive dialogue procedure and in***

1. In the restricted procedure the minimum number of candidates shall be five. In the competitive procedure with negotiation the minimum shall be three. In any event the

the innovation partnership the minimum shall be three. In any event the number of candidates invited shall be sufficient to ensure genuine competition.

number of candidates invited shall be sufficient to ensure genuine competition.

Or. fr

Amendment 1123

Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Małgorzata Handzlik, Konstantinos Poupakis, Anna Maria Corazza Bildt

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. 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*:

Amendment

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the *criterion* on which contracting authorities shall base the award of public contracts shall be *the most economically advantageous tender*.

Or. fr

Amendment 1124

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

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. 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*:

Amendment

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, contracting authorities shall award public contracts *to the most economically advantageous tender*.

Or. de

Justification

The criterion of ‘the most economically advantageous tender’ is the overarching criterion which encompasses qualitative, environmental and social aspects, price and costs.

Amendment 1125

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. 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***:

Amendment

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the ***criterion*** on which contracting authorities shall base the award of public contracts shall be ***the most economically advantageous and sustainable tender***.

Or. de

Amendment 1126

Robert Rochefort

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. 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***:

Amendment

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the ***criterion*** on which contracting authorities shall base the award of public contracts shall be ***the most economically advantageous tender. Where the public contract concerns the supply of goods, particularly standardised goods, contracting authorities may base the award of the contract on the lowest cost criterion***.

Or. fr

Amendment 1127

Marc Tarabella

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. 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:***

Amendment

1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, contracting authorities shall base the award of public contracts ***on multiple criteria used to determine the most economically advantageous tender.***

Or. fr

Amendment 1128

Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Małgorzata Handzlik, Anna Maria Corazza Bildt

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the most economically advantageous tender;

Amendment

deleted

Or. fr

Amendment 1129

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

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the most economically advantageous tender;

Amendment

deleted

tender;

environmentally advantageous tender;

Or. en

Amendment 1133

Anna Hedh

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the most economically advantageous tender;

(a) the most economically, *socially and environmentally* advantageous tender;

Or. en

Amendment 1134

Heide Rühle

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. en

Amendment 1135

Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Małgorzata Handzlik, Anna Maria Corazza Bildt

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. fr

Amendment 1136

Barbara Weiler

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. de

Amendment 1137

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

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. de

Justification

Follow-up amendment to the same author's amendment to Article 66(1). The criterion of 'the most economically advantageous tender' is the overarching criterion which encompasses qualitative, environmental and social aspects, price and costs.

Amendment 1138

Marc Tarabella

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. fr

Amendment 1139
Evelyne Gebhardt

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. de

Amendment 1140
Robert Rochefort

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. fr

Amendment 1141
Toine Manders

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest cost.

deleted

Or. nl

Amendment 1142
Morten Løkkegaard, Jens Rohde

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest *cost*.

(b) the lowest *price*.

Or. en

Amendment 1143
Jürgen Creutzmann

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest *cost*.

(b) the lowest *price only where no other award criteria are available from an objective point of view, in particular for standardised products, which do not differ significantly in their composition or characteristics.*

Or. en

Justification

While the economically most advantageous tender should be the decisive award criterion in most cases, the lowest price criterion should be maintained for standardised products.

Amendment 1144
Christel Schaldemose

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the lowest *cost*.

(b) the lowest *price*.

Or. da

Amendment 1145

Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski, Malgorzata Handzlik, Anna Maria Corazza Bildt

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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. **deleted**

Or. fr

Amendment 1146

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

Proposal for a directive

Article 66 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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. **deleted**

Or. de

Justification

Follow-up amendment to the same author's amendment to Article 66(1). The criterion of 'the most economically advantageous tender' is the overarching criterion which encompasses qualitative, environmental and social aspects, price and costs.

Amendment 1147

Morten Løkkegaard, Jens Rohde, Jürgen Creutzmann

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 1148
Jürgen Creutzmann

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 1149
Heide Rühle

Proposal for a directive
Article 66 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

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

Article 67.

Or. en

Amendment 1150
Evelyne Gebhardt, Birgit Sippel

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

Costs *shall* be assessed using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.

Or. de

Amendment 1151
Christel Schaldemose

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 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 referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:

Or. da

Amendment 1152

Frank Engel, Philippe Juvin, Andreas Schwab, Konstantinos Poupakis, Anna Maria Corazza Bildt

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 **may** include, in addition to the price or costs, other criteria linked to the subject-matter of the public contract in question.

Costs shall be assessed using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.

Price shall be the decisive award criterion in the case of highly standardised products and services.

Other criteria may include:

Or. fr

Amendment 1153

Heide Rühle

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

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 referred to in point (b) of paragraph 1,

1, other criteria linked to the subject-matter of the public contract in question, such as:

other criteria linked to the subject-matter of the public contract in question, such as:

Or. en

Amendment 1154

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

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 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 price or costs *and other qualitative, environmental and social criteria* linked to the subject-matter of the public contract in question, such as:

Or. de

Justification

Follow-up amendment to the same author's amendment to Article 66(1). The criterion of 'the most economically advantageous tender' is the overarching criterion which encompasses qualitative, environmental and social aspects, price and costs.

Amendment 1155

Malcolm Harbour, Edvard Kožušník

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

Amendment

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:

authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question **and, wherever possible, on the basis of the monetisation of the life cycle as defined in Article 2, point 22**. Those criteria **may** 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:

Or. en

Amendment 1156
Evelyne Gebhardt

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 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 other criteria linked to the subject-matter of the public contract in question, such as:

Or. de

Amendment 1157
Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

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

Amendment

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:

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, other criteria linked to the subject-matter of the public contract in question, such as:

Or. en

Amendment 1158 **Sirpa Pietikäinen**

Proposal for a directive **Article 66 – paragraph 2 – introductory part**

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 1159 **Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski**

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

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

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:*

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.

Costs shall be assessed using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67. Price shall be the decisive award criterion in the case of highly standardised products and services. Other criteria may include:

Or. fr

Amendment 1160
Anna Hedh

Proposal for a directive
Article 66 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 1161
Toine Manders

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 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 **may** 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:

Or. nl

Amendment 1162
Jürgen Creutzmann

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 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, other criteria linked to the subject-matter of the public contract in question, such as:

Or. en

Amendment 1163
Sergio Gaetano Cofferati

Proposal for a directive
Article 66 – paragraph 2 – point -a (new)

Text proposed by the Commission

Amendment

(-a) decent working conditions, health and safety in the workplace, respect for collective bargaining;

Or. it

Amendment 1164
Heide Rühle

Proposal for a directive
Article 66 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 1165
Anna Maria Corazza Bildt

Proposal for a directive
Article 66 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, *innovative character, and environmental characteristics, including cost-effectiveness of short-distance procurement where relevant*;

Or. en

Amendment 1166
Herbert Dorfmann

Proposal for a directive
Article 66 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Or. de

Justification

Introducing this additional criterion would enable contracting entities to take account of the specific value added offered by certain products and services. This value added reflects the fact that short cycles mean that goods and services can generally reach contracting authorities more quickly and their changing needs can be met more quickly and flexibly. At the same time, environmental performance can be improved on a lasting basis (shorter transport routes and storage periods, lower emissions).

Amendment 1167
Sirpa Pietikäinen

Proposal for a directive
Article 66 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) **performance**, including **levels of environmental** and **climate performance** and **performance in terms of social impact**;

Or. en

Amendment 1168
Morten Løkkegaard, Jens Rohde

Proposal for a directive
Article 66 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 1169

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

Proposal for a directive
Article 66 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative ***aspects, after-sales service and technical assistance, delivery conditions (delivery date, delivery process and delivery period or period of completion)***;

Or. en

Justification

The list of criteria – other than price or costs – which may be taken into account is not exhaustive but open and it should be clear from the wording of the Article.

Amendment 1170

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive
Article 66 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 1171

Toine Manders

Proposal for a directive

Article 66 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

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

Or. nl

Amendment 1172

Ian Hudghton

Proposal for a directive

Article 66 – paragraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character, **and where justified on public policy grounds in order to promote sustainable economic growth, socio-economic impact**;

Or. en

Justification

Where justified on public policy grounds in order to promote sustainable economic growth, contracting authorities should be able to include criteria related to socio-economic impact in order to identify which tender offers overall best value for money for delivery of the requirement. Alongside existing provisions in the legislative proposal, this amendment would not afford an outright advantage to local tenderers, nor would it discriminate against others.

Amendment 1173 **Catherine Stihler**

Proposal for a directive **Article 66 – paragraph 2 – point a**

Text proposed by the Commission

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

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics innovative character **and where justified on public policy grounds in order to promote sustainable economic growth, socio-economic impact;**

Or. en

Amendment 1174 **Louis Grech**

Proposal for a directive **Article 66 – paragraph 2 – point a**

Text proposed by the Commission

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

Amendment

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character, **support for local training, local support chain, social cohesion, and fair trade considerations, as well as commitment to recruit target groups, such as long term unemployed, young people and disabled people to**

complete the contract.

Or. en

Amendment 1175

Anna Hedh

Proposal for a directive

Article 66 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) life-cycle process criteria;

Or. en

Justification

This amendment aims to broaden the scope for contracting authorities to demand social and environmental concerns in award criteria.

Amendment 1176

Jürgen Creutzmann

Proposal for a directive

Article 66 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) costs over the life cycle in accordance with Article 67

Or. en

Justification

Life-cycle costing should be one of the options in order to determine the economically most advantageous tender rather than an alternative to it.

Amendment 1177

Toine Manders

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

Text proposed by the Commission

Amendment

(aa) innovative characteristics, including the best available techniques;

Or. nl

Amendment 1178
Anna Hedh

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

Text proposed by the Commission

Amendment

(ab) socially sustainable production process criteria, which may also involve the employment of disadvantaged individuals or members of vulnerable groups;

Or. en

Justification

This amendment aims to broaden the scope for contracting authorities to demand social and environmental concerns in award criteria.

Amendment 1179
Andreas Schwab, Birgit Collin-Langen, Sabine Verheyen, Anna Maria Corazza Bildt

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

deleted

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;

Or. de

Justification

The rule stipulating that, following the award of the contract, staff working for the contractor may be replaced only with the consent of the contracting authority and that the latter must verify that the replacements ensure equivalent organisation and quality would generate an excessive administrative workload and might give rise to employment law-related problems, for SMUs in particular. What is more, this rule would run counter to the principle of the separation of the eligibility and award criteria.

Amendment 1180
Heide Rühle

Proposal for a directive
Article 66 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) for service contracts and contracts involving **works and especially** 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;

Or. en

Justification

This should be up to the contracting authority. For restoration of old buildings for example those criteria are as important as in the case of the design of works.

Amendment 1181
Sirpa Pietikäinen

Proposal for a directive
Article 66 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) *life cycle characteristics;*

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

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

(bc) *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 1182
Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 66 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) **wherever the quality of the staff is of crucial importance** for the **performance** of the **contract**, 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;

Or. en

Justification

Qualification and experience of the staff criterion should be taken into consideration only in regard to services of for instance intellectual nature, where qualification and experience of particular person are of a crucial importance for achieving a high quality of service. However, if it is envisaged for all types of services it should at least clarify that the criterion may be applied if qualification and experience of the staff are of a crucial importance for achieving a high quality of particular service.

Amendment 1183
Anna Hedh

Proposal for a directive
Article 66 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question **as well as the capacities, abilities and professional conduct of any subcontractor** may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be

organisation and quality;

replaced ***and further subcontracting will only be permitted*** with the consent of the contracting authority, which must verify that replacements ***or further subcontracting*** ensure equivalent organisation and quality;

Or. en

Justification

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

Amendment 1184 Jürgen Creutzmann

Proposal for a directive Article 66 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) for service contracts and contracts involving the design of works, the 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 ***qualification*** and ***experience***;

Or. en

Amendment 1185 Catherine Stihler

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

Text proposed by the Commission

Amendment

(ba) socially sustainable production process criteria, which may also involve the employment of disadvantaged individuals or members of vulnerable groups;

Or. en

Amendment 1186

Andreas Schwab

Proposal for a directive

Article 66 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) 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, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.

deleted

Or. de

Justification

In the context of contract award procedures, non-procurement-related criteria should be used only if they are closely linked to the subject-matter of the contract. The requirement to take account of production processes when determining the most economically advantageous tender is at odds with that principle.

Amendment 1187

Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 66 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) 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, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.

deleted

Or. en

Amendment 1188
Jürgen Creutzmann

Proposal for a directive
Article 66 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) 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, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.

deleted

Or. en

Amendment 1189
Heide Rühle

Proposal for a directive
Article 66 – paragraph 2 – point d

Text proposed by the Commission

(d) 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, ***to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.***

Amendment

(d) 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, specified in accordance with paragraph 4.

Or. en

Justification

Extremely complex wording - redundant

Amendment 1190
Marc Tarabella

Proposal for a directive
Article 66 – paragraph 2 – point d – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Those criteria may include criteria concerning human resources directly participating in the production process, such as decent conditions including pay, social protection, health and safety protection, equal opportunities and gender equality for the staff assigned to the production, employment for disadvantaged persons or members of vulnerable groups and training opportunities for the workers involved in the production process.

Or. en

Amendment 1191

Heide Rühle

Proposal for a directive

Article 66 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) The contracting authority may also include the necessary price element within the criterion of the economically most advantageous tender by setting a fixed price or cost on the basis of which economic operators will compete on pure quality criteria.

Or. en

Amendment 1192

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 66 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) social criteria, such as respect for the right to decent working conditions, health and safety rules, collective bargaining, gender equality (e.g. equal pay, work-life balance), social integration, including employment opportunities for disabled, disadvantaged or vulnerable workers (such as long-term unemployed persons, Roma, migrants or younger and older workers), access to on-site vocational training, user involvement and consultation, affordability, human rights and ethical trade;

Or. de

Amendment 1193
Vicente Miguel Garcés Ramón

Proposal for a directive
Article 66 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) characteristics pertaining to working conditions that aim to protect the health of the workers or favour the social integration of disadvantaged or disabled persons amongst the persons assigned to performing the contract.

Or. es

Amendment 1194
Sergio Gaetano Cofferati

Proposal for a directive
Article 66 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) social criteria such as, for example, gender equality, social inclusion, including work opportunities for disabled, disadvantaged or vulnerable workers, access to professional training in the workplace, consultation with and participation of users, economic accessibility;

Or. it

Amendment 1195
Christel Schaldemose

Proposal for a directive
Article 66 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) social criteria.

Amendment 1196

Frank Engel, Philippe Juvin, Andreas Schwab, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Małgorzata Handzlik

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 1197

Evelyne Gebhardt, Birgit Sippel

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 1198

Sirpa Pietikäinen

Proposal for a directive

Article 66 – paragraph 3

Text proposed by the Commission

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.

Amendment

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

Or. en

Amendment 1199

Anna Hedh

**Proposal for a directive
Article 66 – paragraph 3**

Text proposed by the Commission

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.

Amendment

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

Or. en

Amendment 1200

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

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

Text proposed by the Commission

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.

Amendment

deleted

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. de

Justification

Article 66(4) is not clearly drafted and does not add anything to the proposal in legal terms. It is not clear what matters the Commission is seeking to regulate by means of the two sentences in question, since their subject-matter is already covered in full by the general ban on circumvention of the rules and the principle of transparency. It should therefore be deleted, for the sake of simplification and greater legal certainty.

**Amendment 1201
Heide Rühle**

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

Text proposed by the Commission

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.

Amendment

4. Award criteria shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified.

Or. en

**Amendment 1202
Evelyne Gebhardt, Birgit Sippel**

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

Text proposed by the Commission

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.

Amendment

4. Award criteria shall ***be closely linked to the subject-matter of the contract (including invisible characteristics of products or services, such as life cycle characteristics, as referred to in point (22a new)***; they 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. 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. de

Amendment 1203
Ivo Belet

Proposal for a directive
Article 66 – paragraph 4

Text proposed by the Commission

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***.

Amendment

4. Award criteria shall not confer an unrestricted freedom of choice on the contracting authority. ***Award criteria used to identify the tender representing the best value for money must:***

(a) be linked to the subject matter;

(b) ensure the possibility of effective competition; and

(c) be accompanied by requirements that allow the information provided by the

tenderers to be effectively verified.

Or. en

Amendment 1204
Raffaele Baldassarre, Lara Comi

Proposal for a directive
Article 66 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The award of contracts for intellectual services shall normally be based on the criterion in point (a) of paragraph 1. The lowest cost criterion may only be used in duly justified cases of uncomplicated, repetitive services that do not call for a multidisciplinary set of skills.

Or. it

Amendment 1205
Sirpa Pietikäinen

Proposal for a directive
Article 66 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

5. 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.

5. 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, ***socially and environmentally*** advantageous tender.

Or. en

Amendment 1206
Anna Hedh

Proposal for a directive
Article 66 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. 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

5. 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, ***socially and environmentally*** advantageous tender.

Or. en

Amendment 1207
Ivo Belet

Proposal for a directive
Article 66 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. 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

5. 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 ***used to identify*** the tender ***representing the best value for money***.

Or. en

Amendment 1208
Jürgen Creutzmann

Proposal for a directive
Article 67 – paragraph 1 – introductory part

Text proposed by the Commission

1. Life-cycle costing shall to the extent relevant cover the following costs over the life cycle of a product, service or works as defined in point (22) of Article 2:

Amendment

1. Life-cycle costing shall to the extent relevant cover **parts or all of** the following costs **borne by the contracting authority or other users** over the life cycle of a product, service or works as defined in point (22) of Article 2:

Or. en

Justification

Life-cycle costing should start at the point of purchase and be limited to internal costs. External costs are difficult to quantify and at the same time life-cycling costing should not lead to new barriers for the free movement of goods and services in the single market. External costs should therefore not be included in the life-cycle costing.

Amendment 1209

Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive
Article 67 – paragraph 1 – point a

Text proposed by the Commission

(a) internal costs, including costs relating to acquisition, **such as production** costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs and

Amendment

(a) internal costs, including costs relating to acquisition, costs **of** use, such as energy consumption **and use of other resources**, maintenance costs, and end of life, such as collection and recycling costs and

Or. en

Justification

It should be noted that life cycle costing should be given particular attention. This criterion should not constitute a burden for SMEs, which may face costs and administrative burden in indicating life cycle costs of a product. Practically it may also constitute complications as there are different methodologies allowed to establish the cost.

Amendment 1210
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 67 – paragraph 1 – point a

Text proposed by the Commission

(a) internal costs, **including costs** relating to **acquisition**, such as **production** costs, **use, such as energy consumption, maintenance** costs, and **end of life**, such as **collection and recycling costs and**

Amendment

(a) internal costs relating to **use**, such as **maintenance and resource efficiency** costs (**including energy efficiency**), **end-of-life recycling and collection** costs, and **social impact costs where these relate to performance of the contract. Internal costs also include considerations of efficient design, planning and process costs** such as **the use of electronic means**.

Or. en

Amendment 1211
Riikka Manner

Proposal for a directive
Article 67 – paragraph 1 – point a

Text proposed by the Commission

(a) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs **and**

Amendment

(a) internal costs, including costs relating to acquisition, such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs

Or. en

Amendment 1212
Jürgen Creutzmann

Proposal for a directive
Article 67 – paragraph 1 – point a

Text proposed by the Commission

(a) **internal** costs, **including costs** relating

Amendment

(a) costs relating to acquisition,

to acquisition, *such as production costs, use, such as energy consumption, maintenance costs, and end of life, such as collection and recycling costs and*

Or. en

Amendment 1213
Jürgen Creutzmann

Proposal for a directive
Article 67 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) costs of use, such as consumption of energy and other resources,

Or. en

Amendment 1214
Jürgen Creutzmann

Proposal for a directive
Article 67 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab) maintenance costs,

Or. en

Amendment 1215
Jürgen Creutzmann

Proposal for a directive
Article 67 – paragraph 1 – point a c (new)

Text proposed by the Commission

Amendment

(ac) end of life costs, such as collection and recycling costs;

Amendment 1216

Morten Løkkegaard, Jürgen Creutzmann, Jens Rohde

Proposal for a directive

Article 67 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs. ***deleted***

Or. en

Justification

External costs are difficult to quantify and at the same time life-cycling costing should not lead to new barriers for the free movement of goods and services in the single market. External costs should therefore not be included in the life-cycle costing.

Amendment 1217

Heide Rühle

Proposal for a directive

Article 67 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

(b) external costs such as social and/or environmental costs, directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

Or. en

Amendment 1218

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

Proposal for a directive

Article 67 – paragraph 1 – point b

Text proposed by the Commission

(b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, **which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.**

Amendment

(b) external environmental costs directly linked to the life cycle **of the product**, provided their monetary value can be determined and verified.

Or. en

Amendment 1219

Pablo Arias Echeverría

Proposal for a directive

Article 67 – paragraph 1 – point b

Text proposed by the Commission

(b) external environmental costs directly linked to the life cycle, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutants and other climate change mitigation costs.

Amendment

(b) external environmental costs directly linked to the life cycle, **including taxes**, provided their monetary value can be determined and verified, which may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

Or. es

Amendment 1220

Heide Rühle

Proposal for a directive

Article 67 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

2. Where contracting authorities assess the

Amendment

2. Where contracting authorities assess the

costs using a life-cycle costing approach, they shall indicate in the procurement documents the *methodology used for the calculation of* the life-cycle costs. The *methodology* used must fulfil all of the following conditions:

costs using a life-cycle costing approach, they shall indicate in the procurement documents the *data to be provided by the tenderers and the method which the contracting authority will use to determine the* life-cycle costs. The *method used for the assessment of those life-cycle costs* must fulfil all of the following conditions:

Or. en

Amendment 1221

Sari Essayah

Proposal for a directive

Article 67 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the methodology used for the calculation of the life-cycle costs. The methodology used must fulfil all of the following conditions:

Amendment

2. Where contracting authorities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents the methodology used for the calculation of the life-cycle costs *and provide the method for the calculation of life-cycle costs to any tenderer*. The methodology used must fulfil all of the following conditions:

Or. en

Amendment 1222

Jürgen Creutzmann

Proposal for a directive

Article 67 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

2. Where contracting authorities *assess the costs using* a life-cycle costing approach, they shall indicate in the procurement documents the *methodology used for the calculation of* the life-cycle costs. *The*

Amendment

2. Where contracting authorities *use* a life-cycle costing approach, they shall indicate in the procurement documents the *data to be provided by the tenderers and the method which the contracting authority*

methodology used must fulfil all of the following conditions:

will use to determine the life-cycle costs on the basis of these data.

Or. en

Amendment 1223
Jürgen Creutzmann

Proposal for a directive
Article 67 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) it has been drawn up on the basis of scientific information or is based on other objectively verifiable and non-discriminatory criteria; *deleted*

Or. en

Justification

It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).

Amendment 1224
Heide Rühle

Proposal for a directive
Article 67 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) it has been drawn up on the basis of scientific information or is based on other objectively verifiable and non-discriminatory criteria; *(a) it is based on objectively verifiable and non-discriminatory criteria;*

Or. en

Amendment 1225

Malgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafal Trzaskowski

Proposal for a directive

Article 67 – paragraph 2 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) it has been drawn up on ***the basis of*** scientific information or is based on other objectively verifiable and non-discriminatory criteria;

(a) it has been drawn up ***in close consultation with stakeholders, including industry and is based*** on scientific information or is based on other objectively verifiable and non-discriminatory criteria;

Or. en

Amendment 1226

Heide Rühle

Proposal for a directive

Article 67 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) it has been established for repeated or continuous application;

deleted

Or. en

Justification

This provision would exclude the possibility of applying a bespoke methodology suitable for one particular contract, which is possible under the current directives.

Amendment 1227

Jürgen Creutzmann

Proposal for a directive

Article 67 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) it has been established for repeated or

deleted

continuous application;

Or. en

Justification

It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).

Amendment 1228
Jürgen Creutzmann

Proposal for a directive
Article 67 – paragraph 2 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) it is accessible to all interested parties. *deleted*

Or. en

Justification

It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).

Amendment 1229
Heide Rühle

Proposal for a directive
Article 67 – paragraph 2 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the data required can be provided with reasonable effort by normally diligent economic operators, including

operators from third countries.

Or. en

Amendment 1230

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

Proposal for a directive

Article 67 – paragraph 2 – subparagraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the data required can be provided with reasonable effort by normally diligent economic operators,

Or. en

Amendment 1231

Sirpa Pietikäinen

Proposal for a directive

Article 67 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting authorities shall allow economic operators, including economic operators from third countries, to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority.

deleted

Or. en

Amendment 1232

Jürgen Creutzmann

Proposal for a directive
Article 67 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting authorities shall allow economic operators, including economic operators from third countries, to apply a different methodology for establishing the life-cycle costs of their offer, provided that they prove that this methodology complies with the requirements set out in points a, b and c and is equivalent to the methodology indicated by the contracting authority.

deleted

Or. en

Justification

It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).

Amendment 1233

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

Proposal for a directive
Article 67 – paragraph 3

Text proposed by the Commission

Amendment

3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

deleted

A list of such legislative and delegated acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article

89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

Or. de

Justification

Provisions which encourage contracting authorities to use life cycle costs as an award criterion are welcome. However, the legal requirement relates to a future calculation method which has yet to be specified and should be rejected at this point, on grounds of unforeseeability.

Amendment 1234
Wim van de Camp

Proposal for a directive
Article 67 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1). **deleted**

Or. nl

Amendment 1235
Jürgen Creutzmann

Proposal for a directive
Article 67 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. Whenever a common methodology for the calculation of life-cycle costs is **deleted**

adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

Or. en

Justification

It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).

Amendment 1236
Heide Rühle

Proposal for a directive
Article 67 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. **Whenever a** common methodology for the calculation of life-cycle costs **is** adopted as part of a legislative act of the Union, **including by delegated acts** pursuant to sector specific legislation, **it** shall be **applied where life-cycle costing is** included in the award criteria referred to in Article 66(1).

Amendment

3. **Any** common methodology for the calculation of life-cycle costs adopted as part of a legislative act of the Union, pursuant to sector specific legislation, **or as part of a European technical specification** shall be **deemed to meet the criteria as set out in Paragraph 2. and may be** included in the award criteria referred to in Article 66(1).

Or. en

Justification

Contracting authorities should be encouraged to consider lifecycle costs. However the development of the calculation method is still experiencing problems. An obligation to use the EU method is far too ambitious further more European legislation on public procurement sets minimum requirement contracting authorities may go further in their requirements as long as they comply with the Treaty principles and the specific requirements for award criteria

Amendment 1237

Sirpa Pietikäinen

Proposal for a directive

Article 67 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

Amendment

3. *The Commission shall establish, either by means of delegated acts or in sector specific legislation, common methodologies for the calculation of life-cycle costs for products where the economic saving or the environmental improvement potential is high.* Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

Or. en

Amendment 1238

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

Proposal for a directive

Article 67 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Whenever a common methodology for the calculation of life-cycle costs *is adopted as part of* a legislative act of the Union, *including by delegated acts pursuant to sector specific legislation*, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

Amendment

3. Whenever a common methodology for the calculation of life-cycle costs ***covering among others environmental externalities has been made mandatory by*** a legislative act of the Union, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 66(1).

Or. en

Justification

It is crucial that common method for the calculation of life cycle costs is adopted by a legislative act of the Union, and that the Commission may only update annex XV. It should be clear from the wording of Article 67 (3) second subparagraph that it confers on the Commission only the right to adopt delegated acts with the objective to update Annex XV. Under no circumstances it shall constitute a basis for the Commission to adopt delegated acts making any LCC methodology mandatory.

Amendment 1239 **Wim van de Camp**

Proposal for a directive **Article 67 – paragraph 3 – subparagraph 2**

Text proposed by the Commission

Amendment

A list of such legislative and delegated acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

deleted

Or. nl

Amendment 1240 **Jürgen Creutzmann**

Proposal for a directive **Article 67 – paragraph 3 – subparagraph 2**

Text proposed by the Commission

Amendment

A list of such legislative and delegated acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove

deleted

necessary.

Or. en

Justification

It would be disproportionate to set out detailed provisions on the methodology for the calculation of life-cycle costs in this directive if life-cycle costing is limited to internal costs starting at the point of purchase, as requested above. As internal costs can be measured relatively easily based on factual data, contracting authorities should be entrusted to use their own methodology (which still must be published).

Amendment 1241

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

Proposal for a directive

Article 67 – paragraph 3 – subparagraph 2

Text proposed by the Commission

A list of such legislative *and delegated* acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

Amendment

A list of such legislative acts is set out in Annex XV. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

Or. en

Amendment 1242

Cornelis de Jong, Mikael Gustafsson

Proposal for a directive

Article 67 – paragraph 3 – subparagraph 2

Text proposed by the Commission

A list of such legislative *and delegated* acts is set out in Annex XV. ***The Commission shall be empowered to adopt delegated acts in accordance with Article 89 concerning the update of this list, when***

Amendment

A list of such legislative acts is set out in Annex XV.

on the basis of the adoption of new legislation, repeal or modification of such legislation, such amendments prove necessary.

Or. en

Amendment 1243
Marc Tarabella

Proposal for a directive
Article 68 – title

Text proposed by the Commission

Amendment

Impediments to award

Decision not to award the contract

Or. fr

Amendment 1244
Marc Tarabella

Proposal for a directive
Article 68 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

Contracting authorities shall not award the contract to the tenderer submitting the best tender where one of the following conditions is fulfilled:

Contracting authorities shall ***be free not to follow up a public procurement procedure. The reasons for the decision not to award the contract must be set out and communicated to all candidates and tenderers.***

In any event, contracting authorities may not award the contract to the tenderer submitting the best tender where one of the following conditions is fulfilled:

Or. fr

Amendment 1245
Heide Rühle

Proposal for a directive
Article 69

Text proposed by the Commission

Amendment

Article 69

deleted

Abnormally low tenders

1. Contracting authorities shall require economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:

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

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

(c) at least five tenders have been submitted.

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

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

(a) the economics of the construction method, the manufacturing process or the services provided;

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

(c) the originality of the work, supplies or services proposed by the tenderer;

(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;

(e) the possibility of the tenderer obtaining State aid.

4. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.

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.

5. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

6. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.

Or. en

Amendment 1246
Peter Simon

Proposal for a directive
Article 69 – paragraph 1

Text proposed by the Commission

Amendment

1. Contracting authorities shall require economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:

deleted

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

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

(c) at least five tenders have been submitted.

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 1247
Wim van de Camp

Proposal for a directive
Article 69 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Contracting authorities shall require economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:

1. If, for a given contract, tenders appear to be abnormally low in relation to the service to be provided, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

Those details may relate in particular to:

Or. nl

Amendment 1248

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

Proposal for a directive

Article 69 – paragraph 1 – introductory part

Text proposed by the Commission

1. Contracting authorities shall require economic operators to explain the price or costs charged, **where all** of the following conditions are fulfilled:

Amendment

1. Contracting authorities shall require economic operators to explain the price or costs charged, **if at least one** of the following conditions are fulfilled:

Or. en

Justification

It seems to be not appropriate to require that all of the conditions must be met in order to establish that a price is abnormally low. It is often enough that just one of these situations occurs for the price to be abnormally low.

Amendment 1249

Lara Comi

Proposal for a directive

Article 69 – paragraph 1 – introductory part

Text proposed by the Commission

1. Contracting authorities shall require economic operators to explain the price or costs charged, where **all of the following conditions are fulfilled**:

Amendment

1. Contracting authorities shall require economic operators to explain the price or costs charged, where **at least five tenders have been submitted or, alternatively**:

Or. it

Amendment 1250

Anna Hedh

Proposal for a directive

Article 69 – paragraph 1 – introductory part

Text proposed by the Commission

1. Contracting authorities shall require

Amendment

1. Contracting authorities shall require

economic operators to explain the price or costs charged, where **all** of the following conditions **are** fulfilled:

economic operators to explain the price or costs charged, where **one** of the following conditions **is** fulfilled:

Or. en

Amendment 1251

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

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. de

Justification

The minimum amount by which the price or cost charged is lower than the average price or costs of the remaining tenders should be reduced to 30 %.

Amendment 1252

Wim van de Camp

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 economics of the construction method, the manufacturing process or the services provided;***

Or. nl

Amendment 1253

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

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 **indicated in a tender** is more than 50 % lower than the average price or costs of the remaining tenders

Or. en

Amendment 1254
Marc Tarabella

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. fr

Amendment 1255
Lara Comi

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

Or. it

Amendment 1256
Raffaele Baldassarre

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. it

Amendment 1257
Anna Hedh

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 1258
Jürgen Creutzmann

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

Justification

Cases fulfilling these conditions are extremely rare. The conditions should be less restrictive, so that this Article can fulfil its purpose.

Amendment 1259

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

Proposal for a directive

Article 69 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) the price or cost indicated in a tender is at least 40 % lower than the price or cost estimated with due diligence, by a contracting authority, taking into consideration due taxes;

Or. en

Amendment 1260

Raffaele Baldassarre

Proposal for a directive

Article 69 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. it

Amendment 1261

Wim van de Camp

Proposal for a directive

Article 69 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

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

Amendment 1262

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

Proposal for a directive

Article 69 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) the price or cost *indicated in a tender* is *at least* 20 % lower than the price or costs of the second lowest tender;

Or. en

Amendment 1263

Anna Hedh

Proposal for a directive

Article 69 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 1264

Małgorzata Handzlik, Róza Gräfin von Thun und Hohenstein, Rafał Trzaskowski, Anna Maria Corazza Bildt

Proposal for a directive

Article 69 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

deleted

Or. en

Justification

It does not seem appropriate to require there be five tenders in order to establish that a price is abnormally low.

Amendment 1265

Lara Comi

Proposal for a directive

Article 69 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) at least five tenders have been submitted.

deleted

Or. it

Amendment 1266

Anna Hedh

Proposal for a directive

Article 69 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) at least five tenders have been submitted.

deleted

Or. en

Amendment 1267

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

Proposal for a directive

Article 69 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

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

Justification

Price explanations should be requested when at least three tenders have been submitted.

Amendment 1268
Wim van de Camp

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) the originality of the design proposed by the tenderer;

Or. nl

Amendment 1269
Marc Tarabella

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. fr

Amendment 1270
Jürgen Creutzmann

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.*

Justification

Cases fulfilling these conditions are extremely rare. The conditions should be less restrictive, so that this Article can fulfil its purpose.

Amendment 1271
Wim van de Camp

Proposal for a directive
Article 69 – paragraph 1 – points c a and c b (new)

Text proposed by the Commission

Amendment

(ca) compliance with the provisions relating to employment protection and terms of employment in force at the place where the contract is to be performed;

(cb) the possibility of the tenderer obtaining State aid.

Or. nl

Amendment 1272
Barbara Weiler

Proposal for a directive
Article 69 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the price charged is lower than national statutory or agreed minimum wages plus additional payments and social security contributions.

Or. de

Amendment 1273
Barbara Weiler

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 be required to* request such explanations.

Or. de

Amendment 1274
Wim van de Camp

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. The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the explanations supplied.

Or. nl

Amendment 1275
Małgorzata Handzlik, Róža Gräfin von Thun und Hohenstein, Rafał Trzaskowski

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. Contracting authorities may also request explanations concerning price or costs indicated in a tender when other conditions, than those indicated in paragraph 1, are fulfilled for instance if the price or cost indicated in a tender is significantly lower than prices or costs indicated in other tenders or than a price or costs estimated by the contracting authority, and the probability that the

price or cost is abnormally low is very high.

Or. en

Justification

It seems appropriate to allow contracting authorities to ask for explanation in order to establish whether a price is abnormally low also in other situations than those provided for in paragraph 1. In addition, it is advisable to give some examples of such additional cases.

Amendment 1276
Pablo Arias Echeverría

Proposal for a directive
Article 69 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Contracting authorities shall take into account compliance with labour law in procurement procedures for services which involve the substitution of staff and which are in economic sectors deemed labour intensive and to offer low added value; tenders for a price which involves labour costs which are lower than wages set out in collective bargaining agreements or the applicable legal minimum wage shall be considered abnormal and disproportionate.

Or. es

Amendment 1277
Wim van de Camp

Proposal for a directive
Article 69 – paragraph 3

Text proposed by the Commission

Amendment

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

3. Where a contracting authority establishes that a tender is abnormally

relate to:

low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time-limit fixed by the contracting authority, that the aid in question was granted legally. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

(a) the economics of the construction method, the manufacturing process or the services provided;

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

(c) the originality of the work, supplies or services proposed by the tenderer;

(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;

(e) the possibility of the tenderer obtaining State aid.

Or. nl

Justification

The requirement to check abnormally low tenders increases the burden both on contracting authorities and on entrepreneurs.

Amendment 1278
Peter Simon

Proposal for a directive
Article 69 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

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

3. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant.

The explanations *in question* may in particular relate to:

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 1279

Peter Simon

Proposal for a directive

Article 69 – paragraph 3 – point b

Text proposed by the Commission

Amendment

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

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

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 1280

Evelyne Gebhardt, Birgit Sippel

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 environmental law ***or with obligations relating to social and employment conditions, such as health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration rulings, collective agreements and contracts and the international labour law provisions*** listed in Annex XI, ***which apply in the place where the work, service or supply is performed (these obligations shall also apply in cross-border situations, in which workers from one Member State provide services in another Member State)***, or, where not applicable, with other provisions ensuring an equivalent level of protection;

Or. de

Amendment 1281
Peter Simon

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 ***the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed***;

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 1282
Sirpa Pietikäinen

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, at least in an equivalent manner, with obligations established by Union legislation in the field of ***animal welfare***, 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 1283
Anna Hedh

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 the ***provisions relating to employment protection and working conditions in force at the place where the work , service or supply is to be performed;***

Or. en

Amendment 1284
Matteo Salvini, Francesco Enrico Speroni

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, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or, ***with the obligations regarding working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in international conventions as listed in Annex XI, whatever the most favourable of workers. These provisions include:***

(i) those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour);

(ii) occupational safety and health

(iii) working time

(iv) wages

(v) social security

Or. en

Amendment 1285
Peter Simon

Proposal for a directive
Article 69 – paragraph 4

Text proposed by the Commission

4. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the

Amendment

deleted

low level of price or costs charged, taking into account the elements referred to in paragraph 3.

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.

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 1286

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

Proposal for a directive

Article 69 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. The contracting authority shall verify the information provided by consulting the tenderer. *It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.*

Amendment

4. The contracting authority shall verify the information provided by consulting the tenderer.

Or. en

Amendment 1287

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

Proposal for a directive

Article 69 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because ***the price or costs indicated in a tender does not cover costs of manufacturing a product, providing services or carrying out works which are subject matter of the public contract, taking into consideration economic conditions, and in particular if*** 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.

Or. en

Justification

For the sake of legal certainty contracting authorities should be obliged to reject the tender where they establish that the price indicated therein does not cover costs borne by the economic operator. It is to be stressed that abnormally low tenders – in particular those that do not guarantee the recovery of costs of manufacturing products, providing services or carrying out works which are subject matter of the public contract – are one of the major factors that may jeopardise the execution of public contracts to the detriment of public interest.

Amendment 1288

Alexander Alvaro, Jürgen Creutzmann

Proposal for a directive

Article 69 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

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, ***data protection law*** or environmental law or by the international

provisions listed in Annex XI.

social and environmental law provisions listed in Annex XI.

Or. en

Amendment 1289

Anna Hedh

Proposal for a directive

Article 69 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 1290

Matteo Salvini, Francesco Enrico Speroni

Proposal for a directive

Article 69 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

Contracting *entities* shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or *with* the *obligations regarding working conditions along the supply chain as stated in national labour laws and regulations in which production processes take place and in* international

*conventions as listed in Annex XI,
whatever the most favourable of workers.*

These provisions include:

(a) those defined by the eight ILO Core Conventions (freedom of association and collective bargaining, forced and compulsory labour, discrimination in respect of employment and occupation, child labour);

(b) occupational safety and health;

(c) working time;

(d) wages;

(e) social security.

Or. en

Amendment 1291
Sirpa Pietikäinen

Proposal for a directive
Article 69 – paragraph 4 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Contracting authorities shall also reject the tender, where they have established that the price or costs charged is abnormally low in proportion to the costs that the tenderer has to cover, and the acceptance of the tender would strengthen the market position of the tenderer in a manner that would lead to distortion of competition in internal markets.

Or. en

Amendment 1292
Peter Simon

Proposal for a directive
Article 69 – paragraph 5

Text proposed by the Commission

5. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was ***compatible with the internal market within the meaning of Article 107 of the Treaty***. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

Amendment

5. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was ***granted legally***. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 1293
Lara Comi

Proposal for a directive
Article 69 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Contracting authorities shall automatically exclude any tender offering discounts higher than 50 % of the average price overall of all the tenders submitted.

Or. it

Amendment 1294
Raffaele Baldassarre

Proposal for a directive
Article 69 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Contracting authorities shall automatically exclude any tender offering discounts higher than 40 % of the average price overall of all the tenders submitted.

Or. it

Amendment 1295

Peter Simon

Proposal for a directive

Article 69 – paragraph 6

Text proposed by the Commission

Amendment

6. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.

deleted

Or. de

Justification

Reinstatement of the wording of the current directive.

Amendment 1296

Malcolm Harbour

Proposal for a directive

Article 69 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Where the contracting authority intends, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising supplies and/or services originating from outside the Union, in which the value of the non-

covered supplies or services exceeds 50 % of the total value of the supplies or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

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

Or. en

Amendment 1297
Heide Rühle

Proposal for a directive
Article 69 a (new)

Text proposed by the Commission

Amendment

Article 69a

Abnormally low tenders

1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it consider relevant. Those details may relate in particular to:

(a) the economics of the construction method, the manufacturing process or the services provided;

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

(c) the originality of the work, supplies or services proposed by the tenderer;

(d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;

(e) the possibility of the tenderer obtaining State aid.

2. The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.

3. Where tenders appear to be abnormally low for other reasons, contracting authorities may also request such information.

4. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was granted legally. Where the contracting authority rejects a tender in these circumstances, it shall inform the Commission of that fact.

Or. en

Justification

This is the Article 55 from the current Directive 2004/18/EC - no need to change it. Point 3 derives from the proposed Directive COM(2011) 896 final (68(2)).

Amendment 1298
Sergio Gaetano Cofferati

Proposal for a directive
Article 69 a (new)

Article 69a

Tenders comprising products originating in third countries

- 1. This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.***
- 2. Contracting authorities may require tenderers to provide information on the origin of the goods and services contained in the tender, and their value. Any tender submitted for the award of a supply contract where the value of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code¹, exceeds 50 % of the total value of the products or services constituting the tender may be rejected under the following conditions.***
- 3. Upon request of contracting authorities, the Commission shall assess whether to approve, for contracts of an estimated value equal or above EUR 5 000 000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contract tenders comprising goods or services originating outside the Union, if the value of goods or services originating in a country with which the Union has not concluded an international agreement in the field of public procurement including market access commitments or goods or services originating in a country with which the Union has concluded such an agreement,***

but in respect of which the agreement does not apply, exceeds 50% of the total value of the goods or services constituting the tender.

4. For contracts referred to in paragraph 3, the Commission shall adopt an implementing act concerning the approval of the intended exclusion. Those implementing acts shall be adopted according to the examination procedure.

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

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

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

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

When adopting implementing acts pursuant to paragraph 6, the Commission shall not approve an intended exclusion where it would violate market access commitments entered into by the Union in its international agreements.

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

(a) to what degree public procurement laws of the country concerned ensure

transparency in line with international standards in the field of public procurement and preclude any discrimination against Union goods, services and economic operators;

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

7. Contracts concluded with an economic operator in violation of Commission implementing acts adopted pursuant to paragraph 4 upon intended exclusion notified by contracting authorities shall be declared ineffective within the meaning of Directive 2007/66/EC.

Or. en

Amendment 1299

Frank Engel, Philippe Juvin, Wim van de Camp, Constance Le Grip

Proposal for a directive

Article 69 a (new)

Text proposed by the Commission

Amendment

Article 69a

Tenders comprising products originating in third countries

1. This Article shall apply to tenders covering products originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.

2. Any tender submitted for the award of a supply contract may be rejected where the proportion of the products originating in

third countries, as determined in accordance with Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[1], exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in telecommunications network equipment shall be regarded as products.

3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 66, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4. For the purposes of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products originating in third countries.

5. The Commission shall submit an annual report to the European Parliament and to the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such

negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend the provisions of this Article in the light of such developments.

[1] OJ L 302, 19.10.1992, p. 1.

Or. en

Amendment 1300
Bernadette Vergnaud

Proposal for a directive
Article 69 a (new)

Text proposed by the Commission

Amendment

Article 69a

Tenders comprising products originating in third countries

1. This article shall apply to tenders covering products or services originating in third countries with which the Union has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for Union undertakings to the markets of those third countries. It shall also apply to tenders containing products or services originating in third countries that are subject to a reservation concerning access to the European market under the terms of international agreements on public contracts concluded by the Union (bilateral free-trade agreements or the Plurilateral Agreement on Government Procurement). It shall be without prejudice to the obligations of the Union or its Member States in respect of third countries.

2. Contracting authorities shall ask tenderers to provide information on the

origin of the goods and services in their tender, and their value, Statements on the tenderer's honour shall be accepted as a preliminary means of proof. A contracting entity can ask, at any time in the procedure, for part or all of the documentation required. Any tender submitted for the award of a supply contract may be rejected where the value of the products originating in third countries, as determined in accordance with

Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, exceeds 50 % of the total value of the products or services constituting the tender. For the purposes of this article, software used in telecommunications network equipment shall be regarded as products.

3. Subject to the second subparagraph, where two or more tenders are equivalent in the light of the contract award criteria defined in Article 76, preference shall be given to those tenders which may not be rejected pursuant to paragraph 2. The prices of those tenders shall be considered equivalent for the purposes of this article, if the price difference does not exceed 3 %.

However, a tender shall not be preferred to another pursuant to the first subparagraph where its acceptance would oblige the contracting entity to acquire equipment having technical characteristics different from those of existing equipment, resulting in incompatibility, technical difficulties in operation and maintenance, or disproportionate costs.

4. For the purposes of this article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion, referred to in paragraph 2, of products and services originating in third

countries.

5. The Commission shall submit an annual report to the European Parliament and the Council, commencing in the second half of the first year following the entry into force of this Directive, on progress made in multilateral or bilateral negotiations regarding access for Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may, in the light of these developments, amend the provisions of this article.

Or. fr

Justification

Pending the adoption of a regulation on reciprocity, it is appropriate to maintain the current provisions of the public procurement legislation.

Amendment 1301

Marc Tarabella

Proposal for a directive

Article 69 a (new)

Text proposed by the Commission

Amendment

Article 69a

When a contracting authority plans to accept an abnormally low tender including works, supplies or services not originating in the European Union, in which the value of the works, supplies or services not covered exceeds 50 % of the total value of the works, supplies or services that make up the tender, in accordance with Article 22a, the

contracting authority shall inform the other tenderers in writing, explaining why the price or costs proposed are abnormally low.

Tenders originating in third countries not bound by an international agreement shall automatically be rejected when the price or cost charged is more than 50 % lower than the average cost of the other tenders.

Or. fr

Amendment 1302

Frank Engel, Philippe Juvin, Wim van de Camp, Konstantinos Poupakis, Constance Le Grip

**Proposal for a directive
Article 69 b (new)**

Text proposed by the Commission

Amendment

Article 69b

Relations with third countries as regards works, supplies and service contracts

1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of service contracts in third countries.

2. The Commission shall report to the European Parliament and to the Council before 31 December 2014, and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.

3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation whereby it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of service

contracts, a third country:

(a) does not grant Union undertakings effective access comparable to that granted by the Union to undertakings from that country; or

(b) does not grant Union undertakings national treatment or the same competitive opportunities as are available to national undertakings; or

(c) grants undertakings from other third countries more favourable treatment than Union undertakings.

4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international social and environmental law provisions listed in Annex XI when these undertakings have tried to secure the award of contracts in third countries.

5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of service contracts to:

(a) undertakings governed by the law of the third country in question;

(b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Union but having no direct and effective link with the economy of a Member State;

(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.

The Council shall act, by qualified majority, as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

6. This Article shall be without prejudice

to the commitments of the Union in relation to third countries ensuing from international agreements on public procurement, particularly within the framework of the WTO.

Or. en

Amendment 1303
Bernadette Vergnaud

Proposal for a directive
Article 69 b (new)

Text proposed by the Commission

Amendment

Article 69b

Relations with third countries as regards works, supplies and service contracts

1. Member States shall inform the Commission of any general difficulties, in law or in fact, encountered and reported by their undertakings in securing the award of works, supplies and service contracts in third countries.

2. The Commission shall report to the European Parliament and the Council periodically on the opening up of works, supplies and service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the WTO.

3. The Commission shall endeavour, by approaching the third country concerned, to remedy any situation where it finds, on the basis either of the reports referred to in paragraph 2 or of other information, that, in the context of the award of works, supplies and service contracts, a third country:

(a) does not grant Union undertakings effective access comparable to that granted by the Union to undertakings

from that third country;

(b) does not grant Union undertakings national treatment or the same competitive opportunities as are available to national undertakings; or

c) grants undertakings from other third countries more favourable treatment than Union undertakings.

4. Member States shall inform the Commission of any difficulties, in law or in fact, encountered and reported by their undertakings and which are due to the non-observance of the international labour law provisions listed in Annex XI when these undertakings have tried to secure the award of works, supplies and service contracts in third countries.

5. In the circumstances referred to in paragraphs 3 and 4, the Commission may at any time propose that the Council decide to suspend or restrict, over a period to be laid down in the decision, the award of works, supplies and service contracts to:

(a) undertakings governed by the law of the third country in question;

(b) undertakings affiliated to the undertakings specified in point (a) and having their registered office in the Union but having no direct and effective link with the economy of a Member State;

(c) undertakings submitting tenders which have as their subject-matter services originating in the third country in question.

The Council shall act, by qualified majority, as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

6. This article shall be without prejudice to the commitments of the Union in relation to third countries ensuing from international agreements on public

procurement, particularly within the framework of the WTO.

Or. fr

Justification

Pending the adoption of a regulation on reciprocity, it is appropriate to maintain the current provisions of the public procurement legislation.

Amendment 1304

Andreas Schwab

Proposal for a directive

Article 70

Text proposed by the Commission

Amendment

Article 70

deleted

Conditions for performance of contracts

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. de

Justification

Any non-procurement-related criteria employed in contract award procedures should be closely linked to the subject-matter of the contract. Allowing contracting authorities to set specific conditions governing the performance of a contract, in particular conditions relating to social and environmental considerations, could lead those authorities to depart from the provisions of Article 66 and the award criteria they lay down.

Amendment 1305

Heide Rühle

Proposal for a directive

Article 70

Text proposed by the Commission

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. ***They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.***

Amendment

Contracting authorities may lay down special conditions ***linked to the subject matter and*** relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations.

Or. en

Amendment 1306

Anja Weisgerber, Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 70

Text proposed by the Commission

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. ***They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.***

Amendment

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations.

Or. de

Justification

It is axiomatic that undertakings should bear the risks associated with a price increase. Article 70(3) gives the impression that they would be required to bear such risks only if the contracting authority has made it a specific condition governing performance of the contract. As a result, the issue would have to be clarified in every single procurement procedure.

Amendment 1307

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 70

Text proposed by the Commission

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, *in particular, concern* social *and environmental* considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may *include economic, innovative, environmental or* social considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract. *However, none of those special conditions shall result in losing the link to the subject matter of the contract.*

Or. en

Amendment 1308

Evelyne Gebhardt, Birgit Sippel

Proposal for a directive

Article 70

Text proposed by the Commission

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that

Amendment

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that

they are indicated in the call for competition or in the specifications. Those conditions *may, in particular, concern social and environmental considerations*. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

they are indicated in the call for competition or in the specifications. Those conditions *shall include obligations relating to social and employment conditions, such as health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration award, collective agreement and contracts and the international labour law provisions listed in Annex XI, which apply in the place where the work, service or supply is performed; these obligations shall also apply in cross-border situations, where workers from one Member State provide services in another Member State*. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. de

Amendment 1309
Cornelis de Jong, Mikael Gustafsson

Proposal for a directive
Article 70

Text proposed by the Commission

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, *in particular, concern social and environmental considerations*. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the

Amendment

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may *include* social and environmental considerations, *and may also include social and employment protection and working conditions applying in the place where the work, service or supply is to be performed as set out by national legislation and/or collective agreements or international*

performance of a contract.

labour law provisions listed in Annex XI.
They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. en

Amendment 1310
Morten Løkkegaard, Jens Rohde

Proposal for a directive
Article 70

Text proposed by the Commission

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions *may, in particular, concern social and environmental considerations.* They may *also* include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications *and are of direct relevance to the contract's works, goods, or services.* Those conditions may include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. en

Amendment 1311
Lara Comi

Proposal for a directive
Article 70

Text proposed by the Commission

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that

Amendment

I. Contracting authorities may lay down special conditions relating to the performance of a contract, provided that

they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. ***They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.***

they are indicated in the call for competition or in the specifications.

2. Those conditions may, in particular, concern social and environmental considerations.

3. ***Member States may provide for economic operators to receive compensation in the event of price increases that could not be foreseen when the tender was submitted.***

Or. it

Amendment 1312 **Sari Essayah**

Proposal for a directive **Article 70**

Text proposed by the Commission

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (***using different hedging strategies including using price adoption formulas***) and that could substantially impact the performance of a contract.

Or. en

Amendment 1313
Jürgen Creutzmann

Proposal for a directive
Article 70

Text proposed by the Commission

Contracting **authorities** may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern **social** and **environmental considerations**. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment

Contracting **entities** may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern **training measures for unemployed** and **young people**. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Or. en

Amendment 1314
Ádám Kósa

Proposal for a directive
Article 70

Text proposed by the Commission

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a contract.

Amendment

Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are indicated in the call for competition or in the specifications. Those conditions may, in particular, concern social and environmental considerations, **as referred to in Recital 41**. They may also include the requirement that economic operators foresee compensations for risks of price increases that are the result of price fluctuations (hedging) and that could substantially impact the performance of a

contract.

Or. en

Amendment 1315

Mitro Repo

Proposal for a directive

Article 70 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Contracting authorities may stipulate that a contract must incorporate requirements concerning working conditions as laid down in ILO Convention No 94.

Or. fi

Amendment 1316

Sirpa Pietikäinen

Proposal for a directive

Article 70 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

A contracting authority may also require a contract to incorporate labour clauses within the meaning of International Labour Organisation (ILO) Convention No 94.

Or. fi

Amendment 1317

Anna Hedh

Proposal for a directive

Article 70 a (new)

Article 70a

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

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

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

3. Member States that have whistle-blower protection for public employee (within the public sector) may request that an equivalent protection is giving to employee employed by the economic operator, if the economic operator performs public funded services.

Or. en

Justification

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

Amendment 1318

Sabine Verheyen, Birgit Collin-Langen

Proposal for a directive

Article 71

Text proposed by the Commission

Amendment

Article 71

deleted

Subcontracting

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.

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

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

Or. de

Justification

The relationship between the tenderer and the subcontractor is governed by national contract law, which should remain unaffected. This provision would create legal uncertainty, in that a subcontractor who works for the contracting authority in return for payment would become the contractor. The provision could deprive the contracting authority of the option of withholding a payment in the expectation that the contract will not be properly performed.

Amendment 1319 **Riikka Manner**

Proposal for a directive **Article 71**

Text proposed by the Commission

Amendment

Article 71

deleted

Subcontracting

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.

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

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

Or. en

Justification

As the main contractor is always liable for fulfilling all its obligations towards the contracting unit, the contracting unit has no reason to ask the tenderer to indicate the share of the contract it may intend to subcontract. The proposition is totally impossible to apply in practice. The contracting unit is not able to define the price of the relevant services, supplies or works of the subcontractor, as it is a business secret of the main contractor.

Amendment 1320 **Heide Rühle**

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 may 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. ***When there is need of a special know-how and/or equipment, subcontractors should be named in the procurements contract by the main contractor.***

Or. en

Amendment 1321 **Marc Tarabella**

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 ***the*** share of the contract it ***wishes*** to subcontract to third parties and any proposed subcontractors, ***providing information regarding the subcontractor, including names, contact details and legal representatives. The***

contracting authority must be informed without delay of any change in the subcontracting chain.

If a change is proposed, including the participation of a new subcontractor in the subcontracting chain, the main contractor must indicate the name, contact details and legal representatives. The operators in the subcontracting chain shall comply with the provisions of this Directive and the conditions laid down in the supply documents, and shall guarantee a performance of the tasks connected with the contract equivalent to that defined in the invitation to tender.

Or. fr

Amendment 1322
Sergio Gaetano Cofferati

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, *providing information regarding the subcontractor including names, contact details and legal representatives.*

Any changes in the subcontracting chain shall be proposed by the economic operator and agreed by the contracting authority. In the case the proposed change regards also the involvement of a new subcontractor, the main contractor shall indicate its name, contact details and legal representatives

Any operators in the subcontracting chain shall ensure the respect of the provisions of this Directive and of the conditions

established in the procurement documents and shall guarantee a performance of the duties connected to the contract equivalent to the one defined in the tender.

Or. en

Amendment 1323
Evelyne Gebhardt, Birgit Sippel

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 or *shall* 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 *and to give information on their subcontractors, including their names, contact details and legal representatives. Any change in the subcontracting chain and any new subcontractors shall be indicated without delay to the contracting authority, including their names, contact details and legal representatives.*

Or. de

Amendment 1324
Phil Prendergast

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

Amendment

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.

tendered to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors. ***Contracting authorities may refuse subcontractors that don't bring added value or that represent a technical, legal or financial risk. Contracting authorities may indicate in the tender document the part which may not be subcontracted. Procurement documents will stipulate the reasons for this restriction.***

Or. en

Amendment 1325
Sergio Gaetano Cofferati

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

Text proposed by the Commission

Amendment

1a. Member States shall limit the possibility for a tenderer to subcontract when executing a public contract to a maximum of three or less successive subcontractors. The contracting authorities may establish further limitations to the use of subcontracting, with regard to the number of subcontractors or of successive subcontractors or to the possibility of changes in the subcontracting chain, or may establish that no parts of the contracts shall be subcontracted to third parties.

Or. en

Amendment 1326
Evelyne Gebhardt, Birgit Sippel

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

Text proposed by the Commission

Amendment

1a. The reasons for using subcontractors shall be set out in the procurement documents; they should be based on technical considerations and should not be designed to reduce labour costs.

Or. de

Amendment 1327
Sergio Gaetano Cofferati

Proposal for a directive
Article 71 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The reasons for the use of subcontractors shall be set out in the procurement documents, strictly motivated by technical considerations and not circumvent relevant legislation and obligations which apply where the provision of works, services and supplies takes place;

Or. en

Amendment 1328
Frank Engel, Andreas Schwab

Proposal for a directive
Article 71 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member

deleted

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.

Or. fr

Amendment 1329
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 71 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

Direct payment by Contracting authorities to subcontractors breaches the legal principle of the freedom to contract and removes the leverage main suppliers have over their supply chain in terms of ensuring timely and quality delivery of the product or service outsourced to the subcontractor.

Amendment 1330
Heide Rühle

**Proposal for a directive
Article 71 – paragraph 2**

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

The relationship between contractor and a subcontractor is a fundamental element of contract law. The proposal will lead to situations where subcontractors try to get directly paid by the contracting authority and deprive the authority from its right to withhold payments from the contractor for valid contract performance reasons.

**Amendment 1331
Peter Simon**

**Proposal for a directive
Article 71 – paragraph 2**

Text proposed by the Commission

Amendment

2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments.

deleted

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

Or. de

Amendment 1332

Marc Tarabella

Proposal for a directive Article 71 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Member States shall limit the possibility for a tenderer to subcontract the performance of a public contract to a maximum of three successive subcontractors.

Member States *shall* provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority *must* 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 *must* be *determined* in the procurement documents.

Or. fr

Amendment 1333
Evelyne Gebhardt

Proposal for a directive
Article 71 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Member States *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.

Or. de

Amendment 1334
Lara Comi

Proposal for a directive
Article 71 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 1335
Raffaele Baldassarre

Proposal for a directive
Article 71 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 1336
Herbert Dorfmann

Proposal for a directive
Article 71 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In cases where subcontractors are not paid directly, Member States shall introduce mechanisms which guarantee that the main contractor does not grant subcontractors conditions which are less favourable than those agreed between the contracting authority and the main contractor.

Amendment 1337

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

Proposal for a directive

Article 71 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may decide that the contracting authority may exclude a subcontractor indicated by the tender if:

(i) subcontractor does not fulfil criteria for selection envisaged for a tender

(ii) subcontractor is not capable to properly fulfil its part of the contract

Terms of participation in a procedure and capacity of a subcontractor to properly fulfil its part of the contract are assessed proportionally to the part of the contract awarded to the subcontractor, on the basis of criteria for qualitative selection indicated in Articles 55 and 56

Or. en

Justification

Contracting authorities should have more possibilities to exert influence on subcontracting by the successful tenderer. In particular they should be empowered to verify the suitability and qualification of proposed subcontractors. All requirements to that effect shall be in conformity with the principle of proportionality.

Amendment 1338

Malcolm Harbour, Edvard Kožušník

Proposal for a directive

Article 71 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

Justification

Unclear.

Amendment 1339
Frank Engel, Andreas Schwab

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. *Paragraph 1* shall be without prejudice to the question of the principal economic operator's liability.

Or. fr

Amendment 1340
Heide Rühle

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. *Paragraph 1* shall be without prejudice to the question of the principal economic operator's liability.

Or. en

Amendment 1341
Sirpa Pietikäinen

Proposal for a directive
Article 71 – paragraph 3

Text proposed by the Commission

3. Paragraphs 1 and 2 shall be without

Amendment

3. Paragraphs 1 and 2 shall be without

prejudice to the question of the principal economic operator's liability.

prejudice to the question of the principal economic operator's liability. ***The contracting authority may be required to ask that the subcontractor complies 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.***

Or. en

Amendment 1342

Marc Tarabella

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. The reasons for using subcontractors must be set out in the contract documents and strictly justified by technical considerations. Subcontracting may not be used to circumvent the relevant legislation and the obligations relating to the provision of works, services and supplies.

Paragraphs 1 and 2 shall be without prejudice to the liability ***of the project manager and subcontractors.***

Member States must provide for a system of joint and several liability in the subcontracting chain.

Or. fr

Amendment 1343

Evelyne Gebhardt, Birgit Sippel

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. *The main contractor and any intermediate subcontractor may, in addition to or in place of a subcontractor, be directly held liable as a guarantor by the employee and/or common funds or institutions of social partners for any liability which arises from the failure by a subcontractor to comply with provisions relating to social and employment conditions, such as health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration rulings, collective agreements and contracts and the international labour law provisions listed in Annex XI, which apply in the place where the work, service or supply is performed; these obligations shall also apply in cross-border situations, where workers from one Member State provide services in another Member State. This shall apply without being subject to any further conditions, and in particular without the employer being directly at fault.*

Or. de

Amendment 1344
Peter Simon

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. **Paragraph 1** shall be without prejudice to the question of the principal economic operator's liability.

Or. de

Amendment 1345
Sergio Gaetano Cofferati, Raffaele Baldassarre

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 and subcontractors'* liability.

Member States shall provide for a system of joint and several liability down the subcontracting chain.

The principal economic operator and any subcontractor involved in doing work on a public contract shall be jointly and severally liable for any liability which arises from the failure by a subcontractor to comply with provisions relating to fundamental rights, health and safety requirements, social rules and standards, employment and working conditions, health and safety at workplace and social security, as set out by EU and national laws, regulations or administrative provisions, collective agreement and contracts, and international labour law provisions listed in Annex XI, that apply in the place where the work, service or supply is performed.

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

Or. en

Amendment 1346
Marc Tarabella

Proposal for a directive
Article 71 – paragraph 3 a (new)

3a. The main economic operator and any subcontractor involved in carrying out works in a public contract shall be jointly and severally liable for non-compliance by the subcontractor in relation to fundamental rights, health and safety requirements, social welfare rules and standards, requirements associated with employment and working conditions, health and safety in the workplace and social security, as well as failure to comply with any relevant provision of European Union law, any national legislative, administrative or regulatory provision, collective agreements and contracts and the international agreements listed in Annex XI that apply in the place where the work is performed or the service or supplies are provided.

These obligations shall also apply in cross-border situations, where workers from one Member State provide services in another Member State.

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 reasons to believe that their immediate subcontractor has violated the rules referred to in the first subparagraph, the immediate subcontractor must take immediate action to remedy the situation, and that, failing this, the contract concerned shall be terminated.

Member States may provide for stricter liability rules under their national law.

Or. fr

Amendment 1347
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 71 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Contracting authorities shall ensure that successful tenderers are contractually obliged to comply in the course of performance of the contract with mandatory legal, regulatory or administrative provisions in force in the Member State of contract performance.

Furthermore, where the successful tenderer subcontracts a part of the works, supplies or services, and where, in the course of performance of the contract, the provisions referred to in the first subparagraph have been breached by any subcontractor as established by a Court or other competent authority, the successful tenderer shall take effective, proportionate and dissuasive contractual sanctions against the subcontractor(s) concerned;

Where the successful tenderer has failed to comply with the obligations set out in the first and/or second subparagraphs within three months of the initial ruling of the Court or other competent authority, the contracting authority shall refer the matter to the Court or other competent authority for a decision on appropriate sanctions.

Or. en

Justification

This proposal seeks to take into account the Rapporteur's concerns over applicable laws affecting the main contractor's obligations and those obligations throughout the supply chain, while ensuring these new rules remain compatible with the basic principles of freedom to contract, and are not abused.

Amendment 1348
Evelyne Gebhardt, Birgit Sippel

Proposal for a directive
Article 71 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. A maximum of three undertakings may be involved successively in the performance of a public contract as subcontractors.

Or. de

Amendment 1349
Sirpa Pietikäinen

Proposal for a directive
Article 72 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. A modification of a contract during its term shall not be considered substantial when the development of goods and services and promotion of innovations requires flexible cooperation between the contracting parties.

Or. en

Amendment 1350
Marc Tarabella

Proposal for a directive
Article 72 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded.
In any case, without prejudice to paragraph 3 and 4, a modification shall be considered

2. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

substantial where one of the following conditions is met:

Or. fr

Amendment 1351
Pablo Arias Echeverría

Proposal for a directive
Article 72 – paragraph 2 – introductory part

Text proposed by the Commission

2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. ***In any case, without*** prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

Amendment

2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. ***Without*** prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:

Or. es