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NOTE

from : General Secretariat
to : Permanent Representatives Committee / Council

Subject : - Proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts
- Proposal for a Directive of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy and transport sectors, and postal services
- Outcome of the European Parliament's second reading
(Strasbourg, 30 June to 3 July 2003)

I. INTRODUCTION

The Rapporteur, Mr Zappalà, introduced the reports on the above proposals on behalf of the Committee on Legal Affairs and the Internal market. The Rapporteur emphasised the important role that both proposals would play in increasing competition in the sectors concerned as well as the substantial savings which they would enable public authorities to achieve.

The Rapporteur also referred to the importance of establishing correctly the financial thresholds above which the proposals would apply, as well as to the importance of ensuring that greater use was made of electronic tendering.

Finally the Rapporteur observed that the draft report carefully respected the need to ensure that environmental and social concerns were taken into account when awarding contracts.

II. DEBATE

Numerous deputies took part in the debate which followed.

On behalf of the EPP/DE Group, Mr Lehne (D) criticised the Council's common position, which, he considered, could lead to an unfair manipulation of the public procurement markets and a less competition.

As regards the inclusion of social and environmental considerations in the awarding of public procurement contracts, Mr Lehne expressed the opinion that such question should be dealt with in environmental or social legislation, rather than in public procurement legislation. The latter view was also echoed by Mr Harbour (EPP/DE, UK).

On the other hand, the opinion that social and environmental considerations should be taken into account when awarding public procurement contracts public procurement was expressed by Mr Koukiadis (GR) for the Socialist Group, Mr MacCormick for the Verts/ALE Group, Mr Blokland (NL) for the EDD Group and Mr Markov (A) for the GUE/NGL Group.

Other speakers, such as Mrs Gephardt (PSE, D), Mrs Schorling, (Verts/Ale, S), Mr Schmid Herman(GUE/NGL, S) and Ms Laguiller (GUE/NGL, F) also underlined the importance of including environmental and social aspects in the criteria to be respected when awarding public sector contracts, in addition to ensuring the participation of small and medium sized enterprises in the public procurement sector.

Mrs Thors (S) for the ELDR Group, while being of the opinion that an increase in the current thresholds could constitute a breach of the European Union's international obligations, nonetheless wished to see the nature of the production methods used by a company taken into account when rewarding contracts; this view was echoed by Mr Jonckheer (Verts/ALE, B).

Mr Hughes (PSE, UK) also criticised the Council's common positions which, he considered, failed to respect the case law of the Court of Justice as regards the incorporation of environmental and social considerations in the awarding of public procurement contracts.

Mr Bolkestein spoke on behalf of the Commission., and expressed the view that the common positions represented a clear improvement as regards the existing legislation. As to the need to take into account social aspects in the awarding of public procurement contracts, the Commissioner pointed out that this concern was appropriately reflected in the recitals to the current texts.

In respect of the explicit reference to production methods (amds 70 and 95 of the "classical directive" and amd 50 of the "utilities directive") as a consideration to be respected in the awarding of contracts, the Commissioner pointed out that this reference was superfluous, since the texts of the common positions, in full accordance with the current case law already provided for the taking into account of production methods as part of the environmental characteristics which must be respected.

III. VOTE

Before proceeding to the amendments tabled to the texts of the common positions, two amendments tabled by the EPP/DE group calling for the rejection of both common positions were rejected.

The Plenary also rejected most of the amendments tabled by the Committee on Legal Affairs and the Internal Market.

The 26 amendments adopted to the "classical directive" (COD 2000/0115) are contained in annex I to this note, the 19 amendments to the "utilities directive" (COD 2000/0117) are contained in annex II to this note.

Of the amendements adopted to the "classical directive", the Commission can accept amds 7 and 84, amds. 9 and 77 (subject to editing) and amd 25 (in principle).

The Commission cannot accept any of the amendments adopted to the "utilities directive".

Procedures for supply, service and works contracts ***II

European Parliament legislative resolution on the Council common position with a view to adopting a European Parliament and Council directive on the co-ordination of procedures for the award of public works contracts, public supply contracts and public service contracts (11029/3/2002 – C5-0141/2003 – 2000/0115(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (11029/3/2002 – C5-0141/2003),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2000) 275)²,
 - having regard to the Commission's amended proposal (COM(2002) 236)³,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0242/2003),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 271 E, 7.11. 2002, p. 176.

² OJ C 29 E, 30.1.2001, p. 11.

³ OJ C 203 E, 27.8.2002, p. 210.

Amendment 1

Recital 2

(2) The achievement of freedom of movement of goods in the matter of public supply contracts, and the achievement of freedom of establishment and freedom to provide services in the matter of public works contracts and public service contracts, for contracts concluded in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law requires not only the abolition of restrictions but also the implementation of provisions on the co-ordination of national procedures for the award of public contracts which are based on the rules governing these three freedoms and on the principles deriving therefrom, such as the principles of equal treatment, of which the principle of non-discrimination is no more than a specific expression, the principle of mutual recognition, the principle of proportionality and the principle of transparency, and the opening-up of public procurement to competition. These co-ordinating provisions should therefore be interpreted in accordance with both the aforementioned rules and principles and other rules of the Treaty.

(2) The achievement of freedom of movement of goods in the matter of public supply contracts, and the achievement of freedom of establishment and freedom to provide services in the matter of public works contracts and public service contracts, for contracts concluded in the Member States on behalf of the State, regional or local authorities and other bodies governed by public law requires not only the abolition of restrictions but also the implementation of provisions on the co-ordination of national procedures for the award of public contracts which are based on the rules governing these three freedoms and on the principles deriving therefrom, such as the principles of equal treatment, of which the principle of non-discrimination is no more than a specific expression, the principle of mutual recognition, the principle of proportionality and the principle of transparency, and the opening-up of public procurement to competition. These co-ordinating provisions should therefore be interpreted in accordance with both the aforementioned rules and principles and other rules of the Treaty. ***Contracting authorities are obliged to observe the above principles as regards all contracts, including those falling below the thresholds specified in Article 7.***

Amendment 77
Recital 9a (new)

(9a) A contract shall be deemed to be a public works contract only if its subject-matter specifically covers the execution of activities listed in Annex I, even if the contract covers the provision of other services necessary for the execution of such activities. Public service contracts, in particular in the sphere of property management services, may, in certain circumstances, include works. However, insofar as such works are incidental to the principal subject matter of the contract, and are a possible consequence thereof or a complement thereto, the fact that such works are included in the contract does not justify the qualification of the contract as a public works contract.

Amendment 7
Recital 24

(24) The awarding of public contracts for certain audio-visual services in the field of broadcasting should allow aspects of cultural or social significance to be taken into account which render application of procurement rules inappropriate. For these reasons, an exception must therefore be made for public service contracts for the purchase, development, production or co-production of off-the-shelf programmes and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme and contracts concerning broadcasting times. However, this exclusion does not apply to the supply of technical equipment necessary for the production, co-production and broadcasting of such programmes.

(24) The awarding of public contracts for certain audio-visual services in the field of broadcasting should allow aspects of cultural or social significance to be taken into account which render application of procurement rules inappropriate. For these reasons, an exception must therefore be made for public service contracts for the purchase, development, production or co-production of off-the-shelf programmes and other preparatory services, such as those relating to scripts or artistic performances necessary for the production of the programme and contracts concerning broadcasting times. ***A broadcast should be defined as transmission and distribution using any form of electronic network.*** However, this exclusion does not apply to the supply of technical equipment necessary for the production, co-production and broadcasting of such programmes.

Amendment 8
Recital 27

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements, and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case. Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics and/or specific environmental effects of product groups or services. They can, but are not obliged to, use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-)national eco-labels or any other eco-label providing the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and providing the label is accessible and available to all interested parties.

(27) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional performance and requirements, and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case. Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics and/or specific environmental effects of product groups or services. They can, but are not obliged to, use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-)national eco-labels or any other eco-label providing the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and providing the label is accessible and available to all interested parties. ***Whenever possible, the contracting authority should take into account accessibility criteria for people with disabilities or design for all requirements when laying down specifications. These technical specifications should be clearly indicated so that all tenderers fully understand the requirements established by the contracting authority.***

Amendment 9
Recital 32

(32) The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of *welfare* and safety at work apply during performance of a public contract, providing that such rules, and their application, comply with Community law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services lays down the minimum conditions which must be observed by the host country in respect of such posted workers. If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.

(32) The laws, regulations and collective agreements, at both national and Community level, which are in force in the areas of *employment conditions* and safety at work apply during performance of a public contract, providing that such rules, and their application, comply with Community law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a public contract, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services lays down the minimum conditions which must be observed by the host country in respect of such posted workers. If national law contains provisions to this effect, non-compliance with those obligations may be considered to be grave misconduct or an offence concerning the professional conduct of the economic operator concerned, liable to lead to the exclusion of that economic operator from the procedure for the award of a public contract.

Amendment 15
Article 1, paragraph 7

7. An "electronic auction" is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values *concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders*, enabling them to be ranked using automatic evaluation methods.

7. An "electronic auction" is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values, enabling them to be ranked using automatic evaluation methods. *This procedure is in no way suited to the award of works contracts or contracts for intellectual-creative and other more complex services.*

Amendment 16
Article 1, paragraph 9, subparagraph 1

9. "Contracting authorities" means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.

9. "Contracting authorities" means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law *as well as purchasing groups set up by the latter for the purpose of awarding public contracts.*

Amendments 18 and 87
Article 1, paragraph 15a (new)

15a. A contract is "particularly complex" if the contracting authority is not able to define, either by holding a design contest or by a functional contract notice, the technical or other means of meeting its requirements or what the market can offer in terms of technical or financial solutions.

Amendment 20
Article 6

This Directive shall not limit the right of economic operators to require a contracting authority, in accordance with the national law to which it is subject, to respect the confidential nature of information which they make available; such information may include, in particular, technical or trade secrets and the confidential aspects of tenders.

Without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 35(4) and 41 respectively, the contracting authorities shall respect fully, both throughout and after the award procedure, the confidential nature of the information furnished by the economic operators. Such information includes technical or trade secrets, the confidentiality of tenders and proposed solutions and any other confidential information given by the economic operator.

Amendment 23
Article 7a (new)

Article 7a

Respect for Community law

Contracting authorities shall be obliged to respect the fundamental principles of Community law in connection with all contracts, including those falling below the thresholds specified in Article 7.

Amendment 25
Article 16, point (b)

(b) the acquisition, development, production or co-production of programme material by broadcasters and contracts for broadcasting time;

(b) the acquisition, development, production or co-production of programme *and other electronic* material *intended for transmission and distribution across all electronic communications networks* by broadcasters and contracts for broadcasting time.

Amendment 26
Article 16, paragraph 1a (new)

In addition, this Directive shall not apply to public supply contracts involving the purchase of schoolbooks in respect of which a fixed final retail price has been laid down by law in the Member State in which the purchase is made.

Amendment 27
Article 18a (new)

Article 18a

Contracts awarded to entities formed by contracting authorities

This Directive shall not apply to contracts awarded by a contracting authority to:

(a) a legally distinct entity, if the contracting authority exercises over that entity a control which is similar to that which it exercises over its own departments and if that entity carries out the essential part of its activities with the controlling contracting authority;

(b) a joint venture formed by that contracting authority with other contracting authorities, if that contracting authority exercises over the joint venture a control which is similar to that which it exercises over its own departments and if the joint venture carries out the essential part of its activities with the controlling contracting authority or authorities.

Amendment 31
Article 23, paragraph 4, subparagraph 2a (new)

A contracting authority that rejects a tender on the grounds that its requirements are not satisfied in an equivalent manner shall inform the tenderer, at the latter's request, of the grounds for the non-equivalence.

Amendment 33
Article 23, paragraph 6a (new)

6a. Whenever possible, public authorities shall take into account accessibility for people with disabilities and design for all requirements. These technical specifications should be clearly indicated in the contract documents.

Amendment 91
Article 29, paragraph 1a (new)

1a. In the case of particularly complex contracts within the meaning of Article 1(15a) the contracting authority may make use of the competitive dialogue in accordance with this Article. The award criterion must be the most economically advantageous tender.

Amendment 44
Article 29, paragraph 6, subparagraph 2

These tenders may be clarified ***and*** specified at the request of the contracting authority. However, such clarification, specification or additional information may not involve changes to the basic features of the tender or the call for tender, variations in which are likely to distort competition or have a discriminatory effect.

These tenders may be clarified, specified ***and fine-tuned*** at the request of the contracting authority. However, such clarification, specification, ***fine-tuning*** or additional information may not involve ***fundamental*** changes to the basic features of the tender or the call for tender, variations in which are likely to distort competition or have a discriminatory effect.

Amendment 47
Article 35, paragraph 2

2. Contracting authorities which wish to award a public contract ***or a framework agreement*** by open, restricted or, under the conditions laid down in Article 30, negotiated procedure ***with the publication of a contract notice or, under the conditions laid down in Article 29, a competitive dialogue***, shall make known their intention by means of a contract notice.

2. Contracting authorities which wish to award a public contract by open, restricted or, under the conditions laid down in Article 30, negotiated procedure shall make known their intention by means of a contract notice ***or, where a qualification system is in operation in accordance with Article 44a, by means of a notice that such a system exists.***

Amendment 51
Article 42, paragraph 2a (new)

2a. Contracting authorities shall provide to tenderers on request a certificate from an accredited third party certifying that they have taken the necessary steps to safeguard the confidentiality of tenderers' information during transmission and after receipt.

Amendment 52
Article 42, paragraph 3a (new)

3a. A tender may be submitted by electronic means only if an advanced electronic signature within the meaning of Directive 1999/93/EC and a reliable means of encrypting the contents are used.

Amendment 54
Article 44a (new)

Article 44a

Qualification systems

1. Contracting authorities which so wish may establish and operate a system for qualification of economic operators.

Authorities which establish or operate a qualification system shall ensure that economic operators are at all times able to request qualification.

2. The system under paragraph 1 may involve different qualification stages.

It shall be operated on the basis of

objective criteria and rules to be established by the contracting authority.

Where those criteria and rules include technical specifications, the provisions of Article 23 shall apply. The criteria and rules may be updated as required.

3. The criteria and rules for qualification referred to in paragraph 2 shall be made available to economic operators on request. The updating of these criteria and rules shall be communicated to the interested economic operators. Where a contracting authority considers that the qualification system of certain other authorities or bodies meets its requirements, it shall communicate the names of such other authorities or bodies to interested economic operators.

4. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

5. When a notice on the existence of a qualification system has been published in accordance with Article 35(2), tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

Amendments 70 and 95
Article 53, paragraph 1, point (a)

(a) when award is made to the tender most economically advantageous **for the contracting authorities**, various criteria **justified by** the subject of the public contract in question: for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion or

(a) when award is made to the tender most economically advantageous, various criteria **linked to** the subject of the public contract in question: for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, **including those relating to production methods**, running costs, cost-effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, **the tenderer's policy in relation to people with disabilities, its equal treatment policy** or

Article 80a

Monitoring mechanisms

Member States shall establish effective, open and transparent mechanisms to ensure implementation of this Directive by contracting authorities operating within their jurisdiction.

These mechanisms may include, inter alia, the establishment of an independent Public Procurement Agency with the powers to monitor contracting processes, to ensure that all stages of a contract award are properly completed and to intervene, as appropriate, where the procedures required by this Directive are not being followed. The independent agency should be given powers to enforce compliance, including, inter alia, the setting aside of contract awards or the re-opening of a contracting process. These powers should be subject to an independent appeals procedure open to contracting authorities and potential suppliers and should not preclude the right of contracting parties to take legal action.

VIII. ITALY

Bodies

Società "Stretto di Messina"
Ente autonomo mostra d'oltremare e del
lavoro italiano nel mondo
Ente nazionale per l'aviazione civile Œ
ENAC
Ente nazionale per l'assistenza al volo -
ENAV

VIII. ITALY

Bodies

Società "Stretto di Messina"
Ente autonomo mostra d'oltremare e del
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Ente nazionale per l'aviazione civile Œ
ENAC
Ente nazionale per l'assistenza al volo -
ENAV
ANAS S.p.a.

Amendment 69
Annex VII, Part A, Prior information notice, Point 1

1. The name, address, fax number, email address of the contracting authority and, if different, of the service from which additional information may be obtained.

1. The name, address, ***telephone and*** fax number ***and*** email address of the contracting authority and, if different, of the service from which additional information may be obtained ***and, in the case of services and works contracts, of the services from which information can be obtained concerning the rules and regulations on taxes, environmental protection, employment protection and working conditions applicable in the place where the contract is to be performed.***

Procurement procedures for water, energy and transport, and postal services *II**

European Parliament legislative resolution on the Council common position with a view to adopting a European Parliament and Council directive coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (12634/3/2002 – C5-0142/2003 – 2000/0117(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (12634/3/2002 – C5-0142/2003),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2000) 276)²,
 - having regard to the Commission's amended proposal (COM(2002) 235)³,
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Legal Affairs and the Internal Market (A5-0245/2003),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 271 E, 7.11.2002, p. 293.

² OJ C 29 E, 30.1.2001, p. 112.

³ OJ C 203 E, 27.8.2002, p. 183.

Amendment 1

Recital 9

(9) The procedures for the award of contracts which are applied by entities operating in the water, energy, transport and postal services sectors call for coordination based on the requirements inferable from Articles 14, 28 and 49 of the Treaty and from Article 97 of the Euratom Treaty, namely the principles of equal treatment, of which the principle of non-discrimination is no more than a specific expression, the principle of mutual recognition, the principle of proportionality, the principle of transparency, and the opening up of public procurement to competition. While ***safeguarding the application of those principles***, this coordination ***should*** establish a framework for sound commercial practice and ***should*** allow a maximum of flexibility.

(9) The procedures for the award of contracts which are applied by entities operating in the water, energy, transport and postal services sectors call for coordination based on ***the aim of guaranteeing a high standard of reliable services of general interest at affordable prices*** and the requirements inferable from Articles 14, 28 and 49 of the EC Treaty and from Article 97 of the Euratom Treaty, namely the principles of equal treatment, of which the principle of non-discrimination is no more than a specific expression, the principle of mutual recognition, the principle of proportionality, the principle of transparency, and the opening up of public procurement to competition. While ***taking into account the overall aims laid down in Articles 2 and 6 of the EC Treaty***, this coordination ***must*** establish a framework for sound commercial practice and ***must*** allow a maximum of flexibility.

Amendment 7

Recital 41

(41) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional

(41) The technical specifications drawn up by public purchasers need to allow public procurement to be opened up to competition. To this end, it must be possible to submit tenders which reflect the diversity of technical solutions. Accordingly, it must be possible to draw up the technical specifications in terms of functional

performance and requirements, and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case. Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics and/or specific environmental effects of product groups or services. They can, but are not obliged to, use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-)national eco-labels or any other eco-label providing the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and providing the label is accessible and available to all interested parties.

performance and requirements, and, where reference is made to the European standard or, in the absence thereof, to the national standard, tenders based on equivalent arrangements must be considered by contracting authorities. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Contracting authorities must be able to provide a reason for any decision that equivalence does not exist in a given case. Contracting authorities that wish to define environmental requirements for the technical specifications of a given contract may lay down the environmental characteristics and/or specific environmental effects of product groups or services. They can, but are not obliged to, use appropriate specifications that are defined in eco-labels, such as the European Eco-label, (multi-)national eco-labels or any other eco-label providing the requirements for the label are drawn up and adopted on the basis of scientific information using a procedure in which stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations can participate, and providing the label is accessible and available to all interested parties. ***Whenever possible, the contracting authority should take into account accessibility criteria for people with disabilities and design for all requirements when laying down specifications. These technical specifications should be clearly indicated so that all tenderers fully understand the requirements established by the contracting authority.***

Amendment 12

Article 1, paragraph 6

6. "Electronic auction" means a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which is held after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

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Amendment 13

Article 2, paragraph 1, point (a), subparagraph 1

(a) "contracting authorities" means the State, regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several of such bodies governed by public law.

(a) "contracting authorities" means the State, regional or local authorities, bodies governed by public law, associations formed by one or several such authorities or one or several of such bodies governed by public law ***as well as purchasing groups set up by the latter for the purpose of awarding public contracts.***

Amendment 14

Article 2, paragraph 3

3. For the ***purposes of this Directive***, special or exclusive rights mean rights granted by a competent authority of ***a Member State by way of any legislative, regulatory or administrative provision*** the effect of which

3. For the ***purpose of applying paragraph 2(b)***, "special or exclusive rights" ***shall*** mean rights ***deriving from authorisations*** granted by a competent authority of ***the*** Member State ***concerned, by law, regulation or***

is to *limit* the exercise of *activities* defined in Articles 3 to 7 to one or more entities, *and which substantially affects the ability of other undertakings to carry out such activity on the same territory under substantially equivalent conditions.*

administrative action, the effect of which is to *reserve for* one or more entities the exercise of *an activity* defined in Articles 3 to 7.

Rights granted in any form, including by way of acts of concession, by a Member State to a limited number of undertakings, on the basis of objective, proportional and non-discriminatory criteria that allow any interested person who satisfies them the opportunity to benefit from them, shall not constitute special or exclusive rights.

Amendment 15

Article 6

1. This Directive shall apply to activities relating to the provision of reserved postal services, *other postal services or*, on the conditions set out in *paragraph 2(d), ancillary postal services.*

2. For the purpose of this Directive and without prejudice to Directive 97/67/EC:

(a) "postal item" means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

(b) "reserved postal services" means services consisting of the clearance, sorting, routing and delivery of postal items which are or may be reserved on the basis of Article 7 of Directive 97/67/EC;

(c) "other *postal* services" means services *other than those listed in (b)* consisting of the clearance, sorting, routing and delivery

1. This Directive shall apply to activities relating to the provision of reserved postal services, other postal services *and*, on the conditions set out in *paragraph 2(c), other services.*

2. For the purpose of this Directive and without prejudice to *the amended version of* Directive 97/67/EC:

(a) "postal item" means an item addressed in the final form in which it is to be carried, irrespective of weight. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight;

(b) "reserved postal services" means services consisting of the clearance, sorting, routing and delivery of postal items which are or may be reserved on the basis of Article 7 of *the amended version of* Directive 97/67/EC;

"other services" means services *provided in the following areas:*

– *postal services* consisting of the

of postal items; and

(d) "ancillary postal services" means services provided in the following areas:

- mail service management services (services both preceding and subsequent to despatch, such as "mailroom management services");
- added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);
- services concerning postal items not included in point (a), such as direct mail bearing no address;
- financial services, as defined in category 6 of Annex XVII A and in Article 24(c) and including in particular postal money orders and postal giro transfers;
- philatelic services; and
- logistics services (services combining physical delivery and/or warehousing with other non-postal functions),

on condition that such services are provided by an entity which also provides postal services within the meaning of **points (b) or (c)** and provided that the conditions set out in Article 30(1) are not satisfied in respect of the services falling within **those points**.

clearance, sorting, routing and delivery of postal items **which are not reserved and which may not be so pursuant to Article 7 of Directive 97/67/EC**; and

- mail service management services (services both preceding and subsequent to despatch, such as "mailroom management services");
- added-value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);
- services concerning postal items not included in point (a), such as direct mail bearing no address;
- financial services, as defined in category 6 of Annex XVII A and in Article 24(c) and including in particular postal money orders and postal giro transfers;
- philatelic services; and
- logistics services (services combining physical delivery and/or warehousing with other non-postal functions),

on condition that such services are provided by an entity which also provides **reserved** postal services within the meaning of **point (b)** and provided that the conditions set out in Article 30(1) are not satisfied in respect of the services falling within **that point**.

Amendment 16

Article 10a (new)

Article 10a

Respect for Community law

The contracting entities shall be obliged to respect the fundamental principles of Community law in connection with all contracts, including those falling below the thresholds specified in Article 16.

Amendment 18

Article 13, paragraph 2

2. This Directive shall not limit the right of economic operators to require a contracting entity, in accordance with the national law to which it is subject, to respect the confidential nature of information which they make available; such information may include, in particular, technical or trade secrets and the confidential aspects of tenders.

2. Without prejudice to the requirements to publish information on contracts awarded and the candidates and tenderers, laid down respectively in Articles 43 and 49, the contracting entities must, throughout the procedure and at its end, respect the confidential nature of information provided by the economic operators. Such information shall include technical or trade secrets, the confidentiality of tenders and proposed solutions, and any other confidential information provided by the economic operator.

Amendment 28

Article 34, paragraph 6a (new)

6a. Whenever possible, public authorities shall take into account the accessibility for people with disabilities and design for all requirements. These technical specifications should be clearly indicated in the contract documentation.

Amendment 29

Article 34, paragraph 8

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

8. Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process, or to trade marks, patents, types or a specific origin or production, ***or a specific producer or supplier***. Such reference shall be permitted, on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraphs 3 and 4 is not possible; such reference ***must include*** the words "or equivalent".

Amendment 35

Article 40, paragraph 3, point (b)

(b) where a contract is purely for the purpose of research, experiment, study or development, ***and not for the purpose of securing a profit or of recovering research and development costs, and in so far as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;***

(b) where a contract is purely for the purpose of research, experiment, study or development;

Amendment 39

Article 48, paragraph 4, subparagraph 1a (new)

A tender may be submitted by electronic means only if an advanced electronic signature within the meaning of Directive 1999/93/EC and a reliable means of encrypting the contents are used.

Amendment 40

Article 48, paragraph 6a (new)

6a. Contracting entities shall provide to tenderers on request a certificate from an accredited third party certifying that they have in place adequate measures to safeguard the confidentiality of tenderers' information during transmission and after receipt.

Amendment 41

Article 49, paragraph 3

3. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a ***reasonable*** period.

If the decision will take longer than ***six*** months from the presentation of an application, the contracting entity shall inform the applicant, within ***two months*** of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.

3. Contracting entities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a ***maximum*** period of ***two months***.

If the decision will take longer than ***two*** months from the presentation of an application, the contracting entity shall inform the applicant, within ***one month*** of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.

Amendment 50

Article 55, paragraph 1, point (a)

(a) where the contract is awarded on the basis of the most economically advantageous tender *for the contracting entities*, various criteria *justified by* the subject-matter of the contract in question, such as delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, environmental characteristics, technical merit, after-sales service and technical assistance, commitments with regard to parts, security of supply, *and* price; or

(a) where the contract is awarded on the basis of the most economically advantageous tender, various criteria *linked to* the subject-matter of the contract in question, such as delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, environmental characteristics *including production methods*, technical merit, after-sales service and technical assistance, commitments with regard to parts, security of supply, price *and the tenderer's equal treatment policy*; or

Amendment 53

Article 59, paragraph 3

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 Community undertakings effective access comparable to that granted by the Community to undertakings from that country; or

(b) does not grant Community 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 Community undertakings.

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 *public procurement* contracts, a third country:

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

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

(c) grants undertakings from other third countries more favourable treatment than Community undertakings, *or*

(d) does not comply with the international labour law provisions listed in Annex XXIIa.

Amendment 55

Annex XI, point D

D. CONTRACTING ENTITIES IN THE
FIELD OF RAILWAY SERVICES

D. CONTRACTING ENTITIES IN THE
FIELD OF RAILWAY SERVICES

*– Council Directive 91/440/EEC of 29 July
1991 on the development of the
Community's railways*

*– Directive 2001/12/EC of the European
Parliament and of the Council of 26
February 2001 amending Council Directive
91/440/EEC on the development of the
Community's railways*

*– Directive 2001/13/EC of the European
Parliament and of the Council of 26
February 2001 amending Council Directive
95/18/EC on the licensing of railway
undertakings*

*– Directive 2001/14/EC of the European
Parliament and of the Council of
26 February 2001 on the allocation of
railway infrastructure capacity and the
levying of charges for the use of railway
infrastructure and safety certification*

Amendment 54

Annex XI, point H

H. EXPLORATION FOR AND
EXTRACTION OF COAL OR OTHER
SOLID FUELS

H. EXPLORATION FOR AND
EXTRACTION OF COAL OR OTHER
SOLID FUELS

*If the requirements of Directive 94/22/EC
also apply, through national legislation, to
coal and other solid fuels*

Amendment 56

Annex XXIIa (new)

Annex XXIIa

Core international labour standards within the meaning of point (d) of Article 59(3), are the following ILO Conventions:

- Convention 87 on Freedom of Association and the Protection of the Right to Organise;*
- Convention 98 on the Right to Organise and Collective Bargaining;*
- Convention 29 on Forced Labour;*
- Convention 105 on the Abolition of Forced Labour;*
- Convention 138 on Minimum Age;*
- Convention 111 on Discrimination in Employment and Occupation;*
- Convention 100 on Equal Remuneration;*
- Convention 182 on Worst Forms of Child Labour.*