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### **INFORMATION NOTE**

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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
- Outcome of the European Parliament's first reading (Strasbourg, 14 to 17 January 2002)

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### **I. INTRODUCTION**

The draft reports on the above two proposals for Directives were debated together in plenary. Mr ZAPPALA (PPE-DE I) introduced the reports on behalf of the Committee on Legal Affairs and the Internal Market. The rapporteur went on to stress the economic importance of the public procurement sector, which represented 15 per cent of the European Union's total GNP.

Most of the amendments tabled were designed to update and improve the current legislation.

The rapporteur also said that the social and environmental aspects of public procurement had sparked lively debate in the Parliamentary Committees concerned.

The following Members took the floor: Mr RAPSKAY (PSE/D), draftsman of the opinion of the Committee on Economic and Monetary Affairs, who underlined the importance of environmental protection in this sector; Mr HUGHES (PSE/UK), draftsman of the opinion of the Committee on Employment and Social Affairs, who said that these proposals should contribute towards establishing a high standard of protection of the health and safety of workers; Ms SCHORLING (Greens/ALE/S), draftsman of the opinion of the Committee on the Environment, Public Health and Consumer Policy, who said that in terms of aiming to integrate the environmental dimension into public procurement the Commission's proposals were unacceptable; Mr KUHNE (PSE/D), draftsman of the opinion of the Committee on Industry, External Trade, Research and Energy, who stressed the importance of compliance with obligations under collective employment agreements; Mr JONCKHEER (Greens/ALE, B), draftsman of the opinion of the Committee on Economic and Monetary Affairs (for proposal 2000/0117 COD), who told plenary that the opinion which he had drafted had been adopted unanimously, which demonstrated that Committee's recognition of the role of public procurement contracts as instruments in sustainable development strategy.

The following Members also spoke: LEHNE (PPE-DE/D), BERGER (PSE/A), THORS (ELDR S), HAUTALA (Greens/Ale, FL), AINARDI (GUE/NG/LI), CROWLEY (UEN/IRL), VAN DAM (EDD/NL), CEDERSCHOLD (PPE-DE/S), GEPHARDT (PSE/D), WALLIS (ELDR/UK), COSSUTTA (GUE/NGL, I), HARBOUR (PPE-DE, UK), Mc CARTHY (PSE, UK), DE CLERCQ (ELDR/B), WUERMELING (PPE-DE/D), KOUKIADIS (PSE/GR) and THORNING-SCHMIDT (PSE/DK).

Commissioner BOLKESTEIN spoke on behalf of the Commission.

## II. VOTE

The plenary approved the amendments in Annex I hereto, with 370 votes for, 82 against and 86 abstentions; the amendments in Annex II were approved, with 392 votes for, 64 against and 16 abstentions.

The Commission's opinion on the amendments adopted, as expressed by Mr BOLKESTEIN during the debate, may be summarised as follows:

## **1. GENERAL DIRECTIVE (2000/0155 (COD))**

(a) amendments acceptable to the Commission:

1, 141, 4, 13, 17, 24, 36, 40, 50, 80, 85, 88, 97, 109 and 112.

(b) amendments unacceptable to the Commission:

32, 37, 38 (in part), 150, 73, 75, 102, 103, 107, 115, 117, 131 49, 76, 116, 159 , 68, 78, 57, 66, 151, 25, 139, 63, 45, 92, 109, 81, 82, 83, 84, 90, 8, 29, 30 (in part), 127, 69, 70 (in part), 71, 72, 94, 108, 111, 162, 172, 173, 99, 100, 145 and 161.

(c) amendments acceptable to the Commission subject to reformulation:

2, 10, 45, 46, 47 and 123, 93 and 95 (in part), 109, 110, 11, 15, 51, 129, 86, 87, 89, 100, 110, 5, 126, 21, 168, 175, 23, 54, 65, 74, 104, 147 (in a recital), 31, 77, 9, 137, 138, 7, 125, 142, 34, 35 (in part), 46, 70, 113, 114, 121, 132, 153, 170 and 171.

The amendments break down as follows:

### **Compliance with the principle of equal treatment:**

*Amds 162 and 1:* (level playing field for tenderers);

*Amd 17:* (requesting the Commission to submit a proposal for a Directive on project financing);

*Amds 127 and 147:* (principles of equal treatment, non-discrimination and transparency);

*Amd 36:* (compliance with the concepts of sheltered employment and sheltered workshop);

*Amd 49:* (application of the same requirements to all firms);

*Amd 69:* (publication of contract notices in the Official Journal)

*Amd 71:* (obligation to ensure contracting authorities' impartiality);

## **Integrating environmental protection requirements and enforcing compliance with core social standards**

*Amds 2 and 97* (pursuant to Article 6 of the Treaty, environmental protection requirements must be integrated into other Community policies and activities);

*Amds 10 and 11* (application of social obligations in the performance of public procurement contracts);

*Amds 15 and 100* (abnormally low tenders – social dumping);

*Amds 159 and 51* (compliance with provisions on employment protection and working conditions);

*Amd 50* (improving the process of informing firms about their general obligations relating to environmental protection and under social law);

*Amd 176* (environmental characteristics relating to production methods);

*Amds 31, 73, 74, 75, 76, 77, 132, 102, 103 and 104* (ensuring adequate data protection when a tender is submitted electronically);

*Amds 92, 93, 94 and 95* (enabling the contracting authority to integrate considerations of environmental protection and the health and safety of workers when evaluating the supplier's technical capability);

*Amd 116* (compliance with international labour standards).

## **Possibility of taking legitimate protective measures against certain products**

*Amd 141* (such measures must be justified and proportional);

## **Scope of the Directive**

*Amd 4* (exemption for regional or local authorities);

*Amd 7* (provides for the execution and design of works to be awarded either separately or jointly);

*Amd 125* (remuneration of engineers);

*Amd 32* (increase in threshold amounts);

*Amds 121 and 37* (purchase of programme material; transactions enabling the contracting authority to raise money or capital);

*Amd 150* (contractors may be entrusted with certain contracts not included in the initial project);

*Amd 38* (exemption for contracting authorities or associations of contracting authorities);  
*Amd 40* (contracts awarded to entities formed by contracting authorities);  
*Amd 57* (the services of architects and engineers to be considered intellectual services);  
*Amd 63* (supply of intellectual services);  
*Amd 139* (framework agreements banned);  
*Amd 66* (particular rules for public–private cooperation)

### **Purchasing groups**

*Amd 5* (grouping of purchases for other contracting authorities in order to reduce purchasing costs);  
*Amd 168* (purchasing groups must be covered by the procedures under this Directive);  
*Amds 126 and 172* (definition of "contracting authorities");  
*Amd 175* (contracts with purchasing groups);

### **Need for an independent public procurement agency**

*Amd 13* (Member States obliged to establish appropriate procedures for implementing the Directive);  
*Amd 108* (monitoring mechanisms);

### **Exclusion of tenderers for public contracts**

*Amd 170* (preventing the award of public contracts to economic operators found guilty of corruption or fraud);

### **Definitions**

*Amd 29* ("design contests");  
*Amd 142* ("public contracts");  
*Amds 171 and 145* ("contract which also includes the supply of services");  
*Amd 21* ("purchasing group");  
*Amds 9 and 173* ("particularly complex contracts");  
*Amd 23* ("reverse auction");  
*Amds 24 and 25* ("framework agreement");  
*Amd 54* (legal certainty about the use of reverse auctions);

*Amd 65* ("electronic auction").

### **Selection criteria specified by the contracting authorities**

*Amd 30* (supplier's compliance with the participation requirements);

### **Technical specifications**

*Amd 8* (specifications should open up competition);

*Amds 34 and 35* (methods of paying insurance premiums, renewal clause);

*Amd 45* (reference to eco-labels);

*Amd 46* (an appropriate means [of proving compliance with specifications] may be constituted by a technical dossier of the manufacturer or a test report of a recognised body);

*Amds 47 and 123* (references that are not permitted);

*Amd 109* ("technical specification");

*Amd 117* (requirements relating to systems for the electronic reception of tenders/requests to participate);

### **Procedure**

*Amd 151* (setting up a qualification system in accordance with Article 54a);

*Amds 70 and 161* (minimum time limits);

*Amd 72* (completion of award procedure);

*Amd 131* (permitted methods of communication);

*Amd 68* (publication of notices regarding qualification systems)

*Amd 78* (qualification systems)

*Amds 80 to 90* (grounds for excluding [economic operators] from the tendering procedure);

*Amd 99* (selection criteria in order of importance);

*Amd 153* (private certification bodies);

*Amd 107* (powers of the European Commission);

*Amds 110 to 115* (information relevant for tenderers from other Member States);

*Amds 137 and 138* (special rules for particularly complex public contracts).

## **2. UTILITIES DIRECTIVE (2000/01117 (COD))**

(a) Amendments acceptable to the Commission:

7, 21, 22, 43, 47, 95, 111 and 29.

(b) Amendments unacceptable to the Commission:

6, 8, 19, 25, 26, 27, 28, 45, 84, 31, 58, 77, 49, 50, 73, 74, 32, 33, 55, 62, 71, 88, 98, 91, 100, 10, 11, 52, 54, 60, 61, 1, 5, 14, 23, 48, 103, 106, 120, 123, 125 and 124.

(c) Amendments acceptable to the Commission subject to reformulation

18, 35, 36, 38, 40, 64, 99, 118, 4, 9, 56, 57, 60, 109, 66 (in part), 67, 68, 69, 70, 76, 78, 79, 80, 81, 82, 83, 85, 86, 89, 96, 13 and 16, 51, 75, 30, 53, and 117.

The amendments break down as follows:

### **Aim of the Directive bearing in mind the general objectives**

*Amd 1* (guaranteeing a high standard of reliable services of common interest);

*Amds 89 and 96* (requirement to integrate environmental protection considerations);

*Amd 4* (possibility of imposing conditions relating to the promotion of social and employment policy objectives);

*Amd 5* (equal treatment between contracting entities operating in the public sector and those operating in the private sector);

*Amd 7* (technical specifications must allow public procurement to be opened up to competition);

*Amd 48* (contracting authorities' impartiality).

### **Integrating environmental protection requirements and enforcing compliance with core social standards;**

*Amds 9 and 70* (abnormally low tenders);

*Amds 32, 33 and 43* (compliance with employment protection conditions and working conditions);

*Amd 47* (obligation to inform tenderers of the relevant employment protection provisions and working conditions);

*Amd 56* (awarding contracts);

*Amd 71* (measures to ensure equal treatment of Community undertakings in third countries/compliance with ILO Conventions);

*Amd 88* (Annex: international labour standards).

### **Contracting authorities' scope to take legitimate protective measures**

*Amd 11* (power to enforce measures necessary to protect public security);

### **Scope of the Directive**

*Amd 8* (remuneration arrangements for a broad range of professions);

*Amd 13* (definition of contracting entities covered by the Directive);

*Amd 16* (provisions governing postal services);

*Amd 18* (groupings of economic operators);

*Amd 45* (contracts awarded for research by undertakings).

### **Exclusions from the Directive's scope**

*Amd 6* (contracts awarded to an affiliated undertaking or a joint venture);

*Amd 19* (exemptions from the scope of this Directive);

*Amd 23* (contracts declared secret by a Member State);

*Amd 25* (contracts awarded on the basis of an exclusive right);

*Amd 26 and Amd 27* (contracts awarded to an affiliated undertaking or to an entity forming part of a joint venture);

*Amd 28* (specifies that it is the nature and value of the contracts involved);

*Amd 29* (contracts awarded by certain contracting entities for the purchase of water or the supply of energy or fuels for the production of energy);

*Amd 31 and Amd 117* (general mechanism for the exclusion of activities directly exposed to competition);

*Amd 57* (exclusion criteria for the tendering procedure);

*Amd 109* (the exclusion criteria listed in Article 46 of the Directive shall apply);

*Amd 60* (includes environmental offences as grounds for excluding a tenderer).



## **Definitions**

*Amds 123, 10 and 124* ("framework agreement");

*Amd 11* ("design contest": financial incentives are needed, in particular to encourage the participation of young professionals);

*Amd 106* ("public authorities": joint purchasing services (purchasing groups) considered as contracting entities);

*Amd 14* ("special or exclusive rights").

## **Procedure**

*Amds 21 and 22* (payment of insurance premiums, tacit renewal clause);

*Amd 30* (European Parliament's right to have an equal say when important amendments are involved);

*Amd 120* (specifications);

*Amds 49, 73* (means of communicating tenders);

*Amds 50, 51, 74, 75 and 103* (ensuring appropriate security where tenders are submitted electronically);

*Amds 52, 53 and 54* (lay down a time limit for contracting entities):

*Amd 55* (review procedures);

*Amd 56* (award of contracts);

*Amds 61 and 62* (operation of system of official lists of approved operators);

*Amd 64* (environmental management standards);

*Amds 66, 67, 68 and 69* (selection criteria);

*Amds 78 to 86 and 125* (Annex: information designed to enhance the legality of contract award procedures).

## **Technical specifications**

*Amds 91 and 98* (technical specifications for eco-labels);

*Amd 35* (technical specifications may also be formulated in terms of performance requirements, functional requirement or requirements with regard to the environmental impact of the product throughout its lifetime);

*Amd 36* (spells out the meaning of "equivalent standards");

*Amds 99 and 118* (the final decision rests with the purchaser);  
*Amds 38 and 39* (definition of an "appropriate means");  
*Amd 100* (an independent report shall constitute an "appropriate means");  
*Amd 40* (technical specifications may not refer to a specific make or source);  
*Amd 58* (application of Community provisions);  
*Amd 95* (environmental impact);  
*Amd 76* (Annex: Directive 94/22/EC);  
*Amd 77* (Annex: Directive 91/440/EEC on the development of the Community's railways).

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**Award of public supply contracts, public service contracts and public works contracts \*\*\*I**

**Proposal for a European Parliament and Council directive on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts (COM(2000) 275 – C5-0367/2000 – 2000/0115(COD))**

The proposal was amended as follows:

Text proposed by the Commission <sup>1</sup>

Amendments by Parliament

Amendment 162  
Recital 1 a (new)

*(1a) Account should be taken of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment<sup>(1)</sup>;*

*(1) OJ L 175, 5.7.1985, p. 40. Directive last amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5).*

Amendment 1  
Recital 3 a (new)

*(3a) Member States must ensure that the participation of a body governed by public law as a tenderer in a procedure for the award of a public contract does not cause any distortion of competition in relation to private tenderers. To that end, Member States may lay down rules relating to the methods to be used to calculate the price/real cost of a tender with a view to its submission to the contracting authority.*

<sup>1</sup> OJ C 29 E, 30.1.2001, p. 11.

Amendment 2  
Recital 3 b (new)

***(3b) In accordance with Article 6 of the Treaty, environmental protection requirements must be integrated into the definition and implementation of Community policies and activities, in particular with a view to promoting sustainable development. This includes policies and activities concerned with the construction of the European internal market and directives on public procurement in particular. The Directive therefore integrates Community policy on environmental protection and sustainable development into the public procurement regime.***

Amendment 141  
Recital 3 c (new)

***(3c) Nothing in this Directive shall prevent any contracting authority from imposing or enforcing measures necessary to protect public morality, public policy, public security or human, animal or plant life or health, in conformity with the Treaty, in particular with a view to sustainable development, provided that these measures are not discriminatory and do not conflict with the objective of opening up markets in the sector of public contracts.***

Amendment 4  
Recital 7 a (new)

***(7a) Certain contracting authorities, particularly regional or local authorities, may, in the course of exercising their powers, award contracts to entities which are formally separate legal entities but which, in view of the particular relationship between the contracting authorities and the entities in question, constitute a mere emanation of the contracting authorities with no***

*autonomous decision-making powers and may, accordingly, be regarded as forming part of those contracting authorities. Under certain conditions, contracts awarded to such entities by contracting authorities should not be subject to the provisions of this Directive.*

Amendment 5  
Recital 13a (new)

*(13a) Certain techniques for centralising purchases have been developed in Member States. Several entities, in charge of procurement for other contracting authorities, have been created for this purpose. These techniques allow, owing to the size of the volumes purchased, broadened competition and improved efficiency of public procurement. It is necessary, therefore, to establish a Community definition for purchasing groups dedicated to contracting authorities and to define the procedures applicable to them, and the manner in which contracting authorities may freely have recourse to purchasing groups, provided that the latter are themselves contracting authorities.*

Amendment 168  
Recital 13 b (new)

*(13b) The provisions of this Directive shall be fully applicable to contracts whereby purchasing groups mentioned under Article 1(5) procure supplies or services. Contracting authorities directly acquiring supplies or services from or through such a purchasing group shall be deemed to have complied with the provisions of this Directive, provided that the purchasing group has complied with those provisions.*

Amendment 142  
Recital 14 a (new)

...

***(14a) Where public service contracts, for instance in the sector of real estate management, also cover works that are ancillary to the main object of the contract and consequential or complementary thereto, the fact that such works form part of the contract does not warrant the contract in question being categorised as a public works contract. By the same token, a contract whose object is specifically concerned with the performance of building or civil engineering works should be regarded as a public works contract, even if the contract also provides for the provision of services which are necessary in order to carry out the building or civil engineering works.***

Amendment 7  
Recital 15 a (new)

***(15a) In view of the varying requirements stipulated in public works contracts, contracting authorities must be able to make provision for the execution and design of works to be awarded either separately or jointly. It is not the intention of this Directive to prescribe either joint or separate contract awards. The decision to award contracts separately or jointly must be determined by qualitative and economic criteria. Joint awards must be duly justified by contracting authorities on those grounds.***

Amendment 8  
Recital 17

(17) 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 bids which reflect the diversity of technical

(17) 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 bids 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, other equivalent arrangements must be accepted. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Reference to specifications stipulating a particular origin should remain the exception.

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, other equivalent arrangements must be accepted. To demonstrate equivalence, tenderers should be permitted to use any form of evidence. Reference to specifications stipulating a particular origin should remain the exception. ***Where no uniform standards applicable throughout Europe are in force in the relevant field, contracting authorities must be permitted to specify a particular national standard. This is necessary in order to keep subsequent maintenance and repair costs as low as possible and, particularly in the case of works with safety implications, to ensure smooth functioning on the basis of known, reliable and compatible building components and structures.***

Amendment 9  
Recital 18

(18) For certain particularly complex contracts, contracting authorities may find it objectively impossible to define the tools likely to meet their needs or assess what the contract can offer in terms of technical or financial solutions without this being attributable to a lack of information or deficiencies on their part. Provision should therefore be made for a negotiated procedure, with a call for competition which is sufficiently flexible to deal with these situations. In these cases, the sole aim of negotiation should be to permit the contracting authority, through dialogue with the candidates, to explain its requirements and define them with the necessary precision so that tenders can be formulated and assessed objectively so as to ascertain the most advantageous tender in economic terms. It should therefore be limited to the

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***phase of the procedure which ends with the drawing-up of the definitive contract documents***; tenders drawn up on the basis of ***those*** contract documents cannot therefore be open to negotiation. This flexibility is granted subject to observance of the principles of equal treatment, non-discrimination and transparency.

***consultation stage***; tenders drawn up on the basis of contract documents cannot therefore be open to negotiation. This flexibility is granted subject to observance of the principles of equal treatment, non-discrimination and transparency.

Amendment 10  
Recital 22

(22) Contract performance conditions are compatible with the Directive provided that they ***are not directly or indirectly discriminatory*** with regard to tenderers from other Member States, and provided that they are indicated in the contract notice. They may in particular be intended to favour employment of excluded or disadvantaged people or to fight against unemployment.

(22) Contract performance conditions are compatible with the Directive provided that they ***do not constitute unjustified discrimination*** with regard to tenderers from other Member States, and provided that they are indicated in the contract notice. They may in particular be intended to favour employment of excluded or disadvantaged people or to fight against unemployment ***or to achieve specific environmental goals***.

Amendment 11  
Recital 22 a (new)

***(22a) In cross-border situations, where workers from one Member State provide services in another Member State in respect of a public procurement contract, European Parliament and Council Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of a transnational provision of services<sup>(1)</sup> sets out conditions which should be observed in the host country in respect of such posted workers.***

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<sup>(1)</sup> OJ L 18, 21.1.1997, p. 1.



Amendment 13  
Recital 30 a (new)

***(30a) Member States should establish the appropriate procedures for the enforcement and operation of this Directive within their own jurisdictions. They should consider the need for an independent public procurement agency to ensure compliance with the Directive by contracting authorities.***

Amendment 125  
Recital 31

(31) The award criteria for the public procurement of services should not prejudice the application of national laws on the remuneration of certain services, such as those on the remuneration of architects or lawyers.

(31) The award criteria for the public procurement of services should not prejudice the application of national laws on the remuneration of certain services, such as those on the remuneration of architects, ***engineers*** or lawyers.

Amendment 15  
Recital 31 a (new)

***(31a) Contracting authorities may reject tenders that are abnormally low owing to non-compliance with minimum social requirements.***

Amendment 170  
Recital 33 a (new)

***(33a) It is appropriate to take action to prevent the award of public contracts to economic operators who have been found guilty by a definitive judgment of offences which call into question their reliability for the purposes of performing the contract which is to be awarded. This applies in particular to the offences of participation in a criminal organisation or corruption or fraud to the detriment of the financial interests of the European Communities in a Member State and to violations of employment law or environmental law***

*relevant to the performance of the contract which is to be awarded. In assessing the reliability of tenderers, account should also be taken of any definitive judgment convicting them of unlawful agreements in connection with public contracts or of serious professional misconduct.*

Amendment 17  
Recital 34 a (new)

*(34a) The Commission should examine the possibility of adopting a proposal for a Directive to regulate systematically the concessions sector and so-called 'project financing'.*

Amendments 171 and 145  
Article 1, paragraph 2, subparagraphs 3 a, 3 b and 3 c (new)

*A contract which also includes the supply of services shall be deemed to be a public works contract if its object specifically relates to the execution of building or civil engineering works and the services are necessary for the execution of such works.*

*Public service contracts in the sector of real estate management which include works shall not be categorised as public works contracts if such works are ancillary with respect to the main object of the contract and are consequential or complementary thereto.*

*The contracting authority's decision concerning the separate or joint award of contracts for works or services shall be guided by qualitative and economic criteria. A joint award must be justified by the contracting authority in relation to these aspects.*

Amendments 126 and 172  
Article 1, paragraph 5, subparagraph 1

5. "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

5. "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.*

Amendment 21  
Article 1, paragraph 5, subparagraph 3 a (new)

*A "purchasing group" means a contracting authority created in order to acquire supplies or services intended for other contracting authorities, or to determine the conditions of procurement thereof. Member States shall notify to the Commission the purchasing groups meeting this definition.*

Amendment 173  
Article 1, paragraph 5 a (new)

*5a. 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 23  
Article 1, paragraph 6 a (new)

*6a. A "reverse auction" means controlled rounds of electronic tendering which result in the contract being awarded to the tenderer who submits the lowest price in the final round of tendering.*

Amendment 24  
Article 1, paragraph 7

7. A ‘framework agreement’ means an agreement between *several economic operators and a contracting authority under which the contracting authority, after following the procedures laid down by this Directive up to the award phase, selects the parties to the agreement on the basis of the tenders they have submitted on the basis of objective criteria, such as quality, quantity, technical merit, delivery period or period of completion and price; under this agreement the economic operators undertake, under certain terms laid down by the contracting authority, to fulfil contracts awarded under the agreement.*

7. A ‘framework agreement’ means an agreement between *a contracting authority within the meaning of paragraph 5 and one or more economic operators the aim of which is to lay down the terms for contracts to be awarded during a particular period, in particular with regard to the prospective price and, where appropriate, the prospective quantity.*

Amendment 25  
Article 1, paragraph 7 a (new)

*7a. ‘Framework agreements’ in the translation and interpreting services sector are identical contracts entered into with several service providers. Translation and interpreting service providers shall be classified in order on the basis of the award criteria and actual merit in contract performance. Actual merit shall be assessed at intervals, in compliance with the principle of equal opportunities.*

Amendment 29  
Article 1, paragraph 9

9. 'Design contests' means those national procedures which enable the contracting authority to acquire, mainly in the fields of area planning, town planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with *or without* the award of prizes.

9. 'Design contests' means those national procedures which enable the contracting authority to acquire, mainly in the fields of area planning, town planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with the award of prizes.

Amendment 30  
Article 3, paragraph 1

1. Tenders may be submitted by groups of economic operators. These groups may not be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so when it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

1. Tenders may be submitted by groups of economic operators, *and the persons taking part may meet the selection criteria specified by the contracting authorities pursuant to Articles 44(2), 47, 48 and 49 cumulatively. The length of any professional experience requested by the contracting authority may not be accumulated. There may be a requirement for minimum criteria to be met by at least one of the members of the group, who shall act as its head.* These groups may not be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so when it has been awarded the contract, to the extent that this change is necessary for the satisfactory performance of the contract.

Amendment 31  
Article 5

Without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and

Without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 34(3) 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. *This includes technical or trade*

tenderers set out in Articles 34(3) and 41 respectively, the contracting authorities shall respect fully the confidential nature of *any* information furnished by the economic operators.

*secrets, the confidentiality of tenders and proposed solutions and any other confidential information given by the economic operator.*

Amendment 147  
Article 6, paragraph 1 a (new)

*The contracting authorities shall nevertheless be obliged to respect, for all contracts, including those below the thresholds referred to in Article 8, the fundamental principles of the Treaty in general and the principle of non-discrimination on the basis of nationality in particular. The principle of non-discrimination implies an obligation of transparency in order to enable the contracting authority to ascertain that the principle is being respected. The obligation of transparency incumbent upon the contracting authority consists in ensuring, for the benefit of every potential tenderer, an adequate level of publicity in order to open up service contracts to competition, as well as control over the impartiality of the award procedures. In defining the appropriate procedures to guarantee respect for this obligation the Member States shall refer to the relevant provisions of this Directive.*

Amendment 175  
Article 6 a (new)

*Article 6a*

*Contracts with purchasing groups*

*The provisions of this Directive shall be fully applicable to contracts whereby purchasing groups mentioned under Article 1(5) procure supplies or services. Contracting authorities acquiring supplies or services directly from a purchasing*

***group or through the intermediary of a third party shall be deemed to have complied with the provisions of this Directive, provided that the purchasing group has complied with those provisions.***

Amendment 32

Article 8, points (a) to (c)

(a) **EUR 130 000** for public supply and service contracts awarded by contracting authorities which are listed as central government authorities in Annex IV; in the case of public supply contracts awarded by contracting authorities operating in the field of defence, this shall apply only to contracts involving products covered by Annex V;

(b) **EUR 200 000**

- for public supply and service contracts awarded by contracting authorities other than those listed in Annex IV;

- for public supply contracts awarded by contracting authorities which are listed in Annex IV and operate in the field of defence, where these contracts involve products not covered by Annex V;

(c) **EUR 5 300 000** for public works contracts awarded by all contracting authorities.

(a) **EUR 200 000** for public supply and service contracts awarded by contracting authorities which are listed as central government authorities in Annex IV; in the case of public supply contracts awarded by contracting authorities operating in the field of defence, this shall apply only to contracts involving products covered by Annex V;

(b) **EUR 300 000**

- for public supply and service contracts awarded by contracting authorities other than those listed in Annex IV;

- for public supply contracts awarded by contracting authorities which are listed in Annex IV and operate in the field of defence, where these contracts involve products not covered by Annex V;

(c) **EUR 7 000 000** for public works contracts awarded by all contracting authorities.

Amendment 34  
Article 12, paragraph 3, point (a)

(a) of the premium payable, in the case of insurance services,

(a) of the premium payable, *as well as other, comparable types of remuneration*, in the case of insurance services,

Amendment 35  
Article 12, paragraph 6, point (b)

(b) in the case of contracts of indefinite duration *or* with a term of more than 48 months, the monthly value multiplied by 48.

(b) in the case of contracts of indefinite duration, *contracts including a tacit renewal clause or contracts* with a term of more than 48 months, the monthly value multiplied by 48.

Amendment 36  
Article 15 a (new)

*Article 15a*

*Contracts reserved for sheltered employment schemes or sheltered workshops*

*Member States may reserve certain contracts for sheltered employment schemes or sheltered workshops. This must be stated in the contract notice.*

*A 'sheltered employment scheme' or 'sheltered workshop' is a scheme or workshop where over half the persons employed are persons with disabilities which, by their nature or gravity, prevent them from following an occupation in normal working conditions, and which offers such persons the security of an employment contract or an apprenticeship contract for the purpose of occupational rehabilitation or retraining.*

Amendment 121  
Article 18, point (b)

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

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



Amendment 37  
Article 18, paragraph (d)

(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services;

(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, ***transactions enabling the contracting authority to raise money or capital*** and central bank services;

Amendment 38  
Article 19

***Service*** contracts awarded on the basis of an exclusive right

This Directive shall not apply to public ***service*** contracts awarded ***to an entity which is itself a contracting authority*** on the basis of an exclusive right which ***it enjoys*** pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

Contracts awarded on the basis of an exclusive right

This Directive shall not apply to public contracts awarded ***by a contracting authority to another contracting authority or to an association of contracting authorities*** on the basis of an exclusive right which ***they enjoy*** pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

Amendment 40  
Article 19 b (new)

***Article 19b***

***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 127  
Article 23, paragraph 3

3. Contracting authorities may require particular conditions concerning performance of the contract, provided that those conditions are compatible with Community law.

3. Contracting authorities may require particular conditions concerning performance of the contract, provided that those conditions are compatible with Community law ***and are in accordance with the principles of equal treatment, non-discrimination and transparency as set out in Article 2.***

Amendment 45  
Article 24, paragraph 3

3. Technical specifications shall be formulated by referring to national standards implementing European standards, European technical approvals, common technical specifications, international standards or when these do not exist national standards or national technical approvals, or any other technical reference produced by European standardisation bodies as defined in Annex VI, provided that the reference is accompanied by the words 'or equivalent'.

They may also be formulated in terms ***either*** of performance ***or*** of functional requirements. They shall, however, be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract.

3. Technical specifications shall be formulated by referring to national standards implementing European standards, European technical approvals, ***European eco-labels***, common technical specifications, international standards or when these do not exist national standards or national technical approvals, or any other technical reference produced by European standardisation bodies as defined in Annex VI, provided that the reference is accompanied by the words 'or equivalent'.

They may also be formulated in terms of performance ***requirements***, of functional requirements ***or of requirements with regard to the environmental impact of the product throughout its lifetime.*** They shall, however, be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract.

***'Equivalent' standards, in the context of the information provided by the contracting authority in its description of the tasks to be performed, mean standards which are compatible with the technical, functional and performance requirements, do not entail or cause any safety risks and do not incur any additional costs for the contracting authority.***

Amendment 46  
Article 24, paragraph 5

5. Where a contracting authority makes use of the option of referring to the specifications mentioned in the first subparagraph of paragraph 3 ***and in paragraph 4***, it cannot reject a tender on the grounds that the products and services tendered for do not comply ***with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a national standard, a national technical specification or a national technical approval, where the tenderer can show in his tender***, by whatever appropriate means, that the solutions he proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

An appropriate means ***is*** constituted by a technical dossier of the manufacturer or a test report of a body ***which is a third party***.

5. Where a contracting authority makes use of the option of referring to the specifications mentioned in the first subparagraph of paragraph 3, it cannot reject a tender on the grounds that the products and services tendered for do not comply ***with the specifications to which they have referred, provided that the tenderer proves in his tender, to the satisfaction of the contracting authority***, by whatever appropriate means, that the solutions he proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

An appropriate means ***may be*** constituted by a technical dossier of the manufacturer or a test report of a ***recognised*** body.

***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 non-equivalence.***

Amendments 47 and 123

Article 24, paragraph 7

7. Technical specifications shall not refer to a specific make or source, ***or a particular process***, or to trade marks, patents, types or a specific origin or production. 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".

7. Technical specifications shall not refer to a specific make or source, or to trade marks, patents, types or a specific origin or ***economic operator engaged in production or supply***. 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".

Amendment 159

Article 26

In the contract documents, the contracting authority ***may*** ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties and any designated sub-contractors. This indication shall be without prejudice to the question of the principal economic operator's liability.

In the contract documents, the contracting authority ***may not place any quantitative restrictions on the exercise, by the undertakings, of freedom of organisation of their own inputs. It shall*** ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties and any designated sub-contractors. This indication shall be without prejudice to the question of the principal economic operator's liability. ***The contracting authority shall prohibit any subcontracting to undertakings which are in the situation referred to in Article 46 and/or undertakings which do not meet the requirements laid down in Articles 47, 48 and 49.***

***Intellectual services, with the exception of translation and interpretation services and management and related services, may not be contracted out.***

Amendment 49  
Article 26, paragraph 1 a (new)

***All requirements regarding the economic, financial and social performance of an economic operator shall apply to firms which carry out subcontracting.***

Amendment 50  
Article 27, title and paragraph 1

Service and works contracts: obligations relating to employment protection provisions and working conditions

1. In the procedures for awarding service and works contracts, the contracting authority ***may*** state in the contract documents, ***or be obliged by a Member State to do so***, the ***authority*** or ***authorities*** from which a tenderer may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the services are to be provided or in which the works ***are*** to be performed and which shall be applicable to the services provided or the works carried out on site during the performance of the contract.

Service and works contracts: obligations relating to ***taxes, environmental protection***, employment protection provisions and working conditions

1. In the procedures for awarding service and works contracts, the contracting authority ***shall*** state in the contract documents the ***body*** or ***bodies*** from which a tenderer may obtain the appropriate information on the obligations relating to ***taxes, environmental protection***, employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the services are to be provided or in which the works ***contract is*** to be performed and which shall be applicable to the services provided or the works carried out on site during the performance of the contract.

Amendment 51  
Article 27, paragraphs 1 a and 1 b (new)

***1a. Contractors shall be obliged to respect as a minimum standard the employment protection obligations, working conditions and labour law obligations, including collective as well as individual rights, arising from applicable labour legislation, judicial decisions and collective agreements which are deemed to be generally binding, provided that these are compatible with existing Community legislation and the***

*general rules and principles of Community law, in particular the principle of equal treatment and non-discrimination.*

*1b. The provisions under paragraph 1a shall not prevent application of employment protection provisions and working conditions which are more favourable to workers provided that these are compatible with Community law.*

Amendment 54  
Article 28, paragraph 3 a (new)

*3a. Without prejudice to paragraphs 1, 2 and 3, where a contracting authority decides to invite the submission of tenders by electronic means, the contracting authority may decide to award the contract by a reverse auction as defined in Article 1(6a).*

Amendment 57  
Article 29, point 3

3. In respect of public service contracts, when the nature of the *services* to be *procured*, in particular in the case of intellectual services and services falling within category 6 of Annex I A, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender according to the rules governing open or restricted procedures.

3. In respect of public *supply or* service contracts, when the nature of the *tasks* to be *performed*, in particular in the case of intellectual services , *such as, for example, category 12 of Annex I A* and services falling within category 6 of Annex I A, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender according to the rules governing open or restricted procedures.

1. *In the cases referred to in point (b) of Article 29(1), the contracting authorities shall publish a contract notice, choose the candidates and negotiate with them the means and the solutions best suited to meeting their needs. They shall then draw up the contract documents, check that the candidates' capacity is appropriate to the retained technical solution and invite all the candidates or a restricted number thereof to submit a tender and they shall assess the tenders, without negotiation, on the basis of the criteria established to determine the most economically advantageous tender.*

2. *The contracting authorities shall state in the contract notice all the conditions which the economic operators must fulfil in order to be admitted to the award procedure. These conditions shall consist*

*(a) either of only the information specified in accordance with the provisions of Article 44 and those on qualitative selection criteria referred to in Articles 46 to 52,*

*(b) or of this information and the obligation to present an outline solution and, if necessary, an estimate of the costs of its implementation.*

*The qualitative selection criteria defined in the contract notice shall remain unchanged throughout the award procedure.*

Under Article 45(2) the contracting authorities may decide to invite a restricted number of *candidates meeting the selection criteria to negotiate*. In this case, they shall announce this in the contract notice and reduce the number of *invited candidates*

objectively on the basis of *the selection criteria* set

1. *In the case of particularly complex contracts within the meaning of Article 1(5a) the contracting authorities shall publish a contract notice. This shall contain in particular:*

*(a) as precise a description as possible of their requirements in respect of the work to be performed,*

*(b) the estimated value of the contract,*

*(c) the conditions which the economic operators must fulfil in order to be admitted to the award procedure in accordance with Article 44 and the selection criteria referred to in Articles 46 to 52,*

*(d) the award criteria and their respective weighting,*

*(e) an invitation to submit an outline solution.*

2. *The outline solution shall be submitted within the time limit laid down in the second sentence of point (a) of Article 37(3).*

Under Article 45(2) the contracting authorities may decide to invite a restricted number of *participants in the award procedure to take part in a competitive dialogue*. In this case, they shall announce this in the contract notice and reduce the number of *participants* objectively on the basis of *factors relating to the competences and expertise* set out in the same notice *in*

out in the same notice.

*accordance with the provisions of Article 44(2), (4) and (6). The number of candidates invited to participate in the award procedure must be at least three, provided that sufficient candidates possess the necessary qualifications in terms of competence and expertise. The award criteria and their respective importance must be set out in the contract notice in accordance with point (b) of Article 53(1) and may not be altered in the course of the award procedure, subject to the provisions of paragraph 3.*

*When an outline solution is requested, the contracting authorities may define their requirements concerning the economic operators' financial and economic standing, as provided for in Article 48, in terms of percentages of the estimated value of the outline solutions to be presented by the various candidates, and the requirements concerning their technical capability and experience, as provided for in Article 49, according to the skills and experience required to compile the outline solutions.*

*3. Contracting authorities shall set out their needs and requirements in terms of objectives to be achieved and, if necessary, in terms of performance or functional requirements. These needs shall be set out in the most detailed manner possible.*

*3. The contracting authorities shall discuss, in a separate technical dialogue with each of the selected candidates, the technical means, designs and solutions best suited to meeting their needs. The contracting authorities may not disclose the proposed solutions and confidential information provided by candidates to other candidates or to third parties either during, or after the completion of, the procedure. If, in the course of the negotiations, the contracting authority deems it necessary to change the original requirements for the work in question specified in the contract notice, it must inform simultaneously and in writing all participants in the technical dialogue of any such change. The award criteria and their relative importance may not be amended unless they are no longer appropriate to the subject matter of the contract as established in the light of the technical dialogue. Any proposed solutions submitted by candidates after that time shall be final. Any candidates who had submitted their proposed solutions before any such change was made must be given*



*the opportunity to revise their position and draw up a fresh outline proposal if they wish.*

*The requirements thus defined shall serve as a basis for the formulation of the outline solutions and the cost estimates, where requested, and for the negotiation.*

*4. The award criteria shall be established in accordance with point (b) of Article 29(1) and with Article 53, and may not be amended in the course of the procedure unless they are no longer appropriate to the subject-matter of the contract as defined in the contract documents after the negotiation phase. Article 54 concerning abnormally low tenders shall be applicable.*

*The conditions shall be set out in the contract notice or in the document specifying the authority's requirements; however, if an outline solution is not required, they may be specified in the invitations to participate in the negotiation phase.*

*5. Contracting authorities which have not required the request to participate to be accompanied by an outline solution may, in the invitations to be negotiated, ask that an outline solution be submitted. The time-limit for this submission shall be appropriate to the complexity of the needs which outline solutions are invited to meet and, in any case, may not be less than 25 days from the date of dispatch of the invitations.*

*4. The contracting authority shall declare the technical dialogue closed after consulting all candidates. All proposed solutions submitted thereafter shall be final. Candidates shall be invited simultaneously, and in writing, to state the cost of their definitive outline proposal within ten days. The contracting authority shall assess the tenders, without negotiation, on the basis of the criteria established to determine the most economically advantageous tender.*

*5. The contracting authority must make provision in the contract notice for participants to receive a monetary payment to compensate for any costs incurred. It shall be payable to all candidates whose outline proposals constitute feasible solutions. The amount of the monetary payment shall be indicated when candidates are invited to take part in the competitive dialogue, and must be such as to cover the average cost involved in preparing for and participating in the technical dialogue. If the contracting authority amends its requirements with regard to the work in question in the course of the technical dialogue, the compensatory payment shall be raised to take account of the additional work therefore incurred for candidates. The aggregate sum to be paid by way of compensation to all candidates shall be taken into account for the purpose of calculating the threshold values pursuant to Article 8 and must not exceed 15% of the estimated contract value set out*

*in the contract notice.*

**6. The purpose of negotiation with the selected candidates shall be solely to discuss and define the means best suited to meeting the needs of the contracting authority.**

**During negotiation, the contracting authorities may not disclose to the other participants the solutions proposed or any other confidential information given by a participant.**

**7. After announcing the end of negotiations and informing all the participants thereof, the contracting authorities shall check, by applying the selection criteria already set in accordance with paragraph 2, whether the candidates' economic, financial and technical capacity is appropriate to the technical solution specified in the final contract documents. Where the economic,**

**financial or technical capacity of one or more candidates, as proven at the request to participate in negotiations, is not appropriate to the technical solution, contracting authorities shall make a written request to the candidates concerned to present the necessary documentation to allow a check to be carried out, on the basis of the above mentioned criteria, as to whether they have the capacity adapted to the retained technical solution. Article 44(5) shall apply.**

**The invitations to submit a tender shall be drawn up in accordance with Article 40 and sent in writing. They shall be accompanied by the definitive contract documents setting out the technical specifications in accordance with Article 24.**

**In accordance with Article 45(2), the number of candidates invited to submit bids may not be less than three, provided that there is a sufficient number of suitable candidates meeting the selection criteria specified by the contracting authority.**

**8. Time periods for receipt of tenders shall be fixed in accordance with Article 37.**

**9. The contracting authorities may specify prices and payments to the participants. Such prices and payments shall be taken into consideration for the application of Article 8.**

Amendment 138  
Article 30 a (new)

**Article 30a**

**Exclusive dialogue**

**1. In the case of contract award procedures whose objective is the creation of a public-private partnership, nothing in this Directive shall prevent the operation of paragraph 2.**

**2. Where there are matters that cannot reasonably or cost-effectively be resolved prior to the receipt of tenders, those matters may be the subject of exclusive dialogue between the contracting authority and the tenderer that has submitted the most economically advantageous tender prior to the award of the contract. This exclusive dialogue may not substantially alter fundamental aspects of the most economically advantageous tender, distort competition or infringe the Treaty or the general principles of Community law.**

Amendment 150  
Article 31, point 4 (a), subparagraph 2 a (new)

**Contractors may be entrusted directly with additional works not included in the initial project which have, through unforeseen circumstances, become necessary for the performance of the work when such additional works cannot be technically or economically separated from the main work without major inconvenience or when such works, although separable from the performance of the main work, are strictly necessary for its completion.**

Amendment 151  
Article 32, paragraph 2 a (new)

***2a. Where contracting authorities choose to set up a qualification system in accordance with Article 45a, the system shall be the subject of a notice drawn up in accordance with the standardised model in the Annexes to Directive .../.../EC of the European Parliament and the Council of ... [coordinating the procurement procedures of entities operating in the water, energy and transport sectors]<sup>(1)</sup> indicating the purpose of the qualification system and how to have access to the rules concerning its operation. The system shall not have a duration of less than five years.***

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***(1) OJ L ...***

Amendment 63  
Article 32, paragraph 3 a (new)

***3a. The agreements provided for in this article shall not apply to intellectual services.***

***The contracting authorities may conclude multiple framework agreements for the provision of translation and interpreting services.***

***For any given service, the contracting authorities must select the economic operator available to perform that service in accordance with the order of ranking.***

Amendment 139  
Article 32, paragraph 3 b (new)

***3b. Subject to the definition of framework contracts in Article 1(7), framework agreements shall not be admissible in the case of public works contracts.***

*Article 32a*

*Electronic auction*

*1. In cases where it is possible for the qualitative and quantitative characteristics of the object or service to be procured to be described so precisely that the only item still to be agreed is the price, the contracting authority may award the contract electronically by means of an auction using the open procedure. The contracting authority shall set a maximum price as the starting price, which tenderers may underbid. If the lowest offer is below the relevant threshold, this shall not affect the application of this Directive, provided that the starting price was above the threshold.*

*2. The auction must be announced at least 15 days beforehand in the Official Journal of the European Communities. In addition, the provisions of Articles 34 to 36 shall apply.*

*3. The auction shall continue for a minimum of seven days. Offers may be submitted throughout that period. The steps to be taken by tenderers shall be established by the contracting authority ex aequo et bono, by the beginning of the auction at the latest.*

*4. The contract will be awarded to the tenderer who has submitted the most advantageous offer while complying with the conditions laid down in Articles 46 to 50. If the tenderer submitting the most favourable offer is disqualified, the tenderer offering the next most advantageous offer shall be selected, subject to the provisions of this paragraph.*

*5. If no bids are received, Article 28 shall apply.*

Amendment 66  
Article 33, title and paragraph 1

Public works contracts: particular rules *on subsidised housing schemes*

*In the case of contracts relating to the design and construction of a subsidised housing scheme whose size and complexity, and the estimated duration of the work involved, require that planning be based from the outset on close collaboration within* a team comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the works, a special award procedure may be adopted for selecting the contractor most suitable for integration into the team.

Public works contracts: particular rules *for public-private cooperation*

*In the case of public works which, for reasons of size, complexity, duration and/or financing, require collaborative project planning by* a team comprising representatives of the contracting authorities, experts and the contractor to be responsible for carrying out the works, a special award procedure may be adopted for selecting the contractor most suitable for integration into the team.

Amendment 68  
Article 34, paragraph 2

2. Contracting authorities who wish to award a public contract by open, restricted or, under the conditions laid down in Article 29, negotiated procedure, shall make known their intention by means of a contract notice.

2. Contracting authorities who wish to award a public contract by open, restricted or, under the conditions laid down in Article 29, negotiated procedure, shall make known their intention by means of a contract notice *or, where a qualification system is maintained in accordance with Article 45a, by means of a notice on the existence of a qualification system.*

Amendment 69  
Article 35, paragraph 1, subparagraph 1

1. The notices shall be drawn up in accordance with the standard forms adopted by the Commission in accordance with the procedure in Article 76(2) and shall, at the least, specify the information indicated in Annex VII A.

1. The notices shall be drawn up in accordance with the standard forms adopted by the Commission in accordance with the procedure in Article 76(2), *shall be published in the Official Journal of the European Communities* and shall, at the least, specify the information indicated in Annex VII A.

Amendment 161  
Article 37, paragraph 1

**1. All time-limits for the receipt of tenders and requests to participate fixed by the contracting authorities shall be sufficiently long to give interested parties reasonable time appropriate to the contract to draw up and submit their tenders. When fixing these time-limits, contracting authorities shall take particular account of the complexity of the contract and the time required for drawing up tenders.**

**Deleted**

Amendment 70  
Article 37, paragraphs 3 to 7

3. In the case of restricted procedures and negotiated procedures with publication of a contract notice referred to in Article 29:

3. In the case of restricted procedures and negotiated procedures with publication of a contract notice referred to in Article 29, the minimum time-limit for receipt of requests to participate shall be **40 days** from the date on which the contract notice was sent.

**(a) the minimum time-limit for receipt of requests to participate shall be 37 days from the date on which the contract notice was sent; however, for particularly complex contracts referred to in point (b) of Article 29(1), this time-limit shall not be less than 47 days from the date on which the contract notice was sent where the request to participate must be accompanied by an outline solution;**

**(b) the minimum time-limit for the receipt of tenders shall be 40 days from the date on which the invitation was sent.**

4. When contracting authorities have published an indicative notice, the minimum time-limit for the receipt of tenders shall be, **as a general rule, 36 days, but under no circumstances less than 26 days.**

The period shall run from the date on which the contract notice was sent in open procedures, and from the date on which the invitation to tender was sent in restricted

4. When contracting authorities have published an indicative notice, the minimum time-limit for the receipt of tenders shall be **40 days.**

The period shall run from the date on which the contract notice was sent in open procedures, and from the date on which the invitation to tender was sent in restricted

procedures and negotiated procedures with publication of a contract notice referred to in Article 29.

The shortened time-limits referred to in the first subparagraph shall be permitted, provided that the indicative notice has included all the information required in the model contract notice and was sent for publication between no less than 52 days and no more than twelve months before the date on which the contract notice was sent.

***5. Where notices are drawn up and transmitted by electronic means in accordance with Annex VIII, the time-limits for the receipt of tenders referred to in paragraph 2 and 4 in open procedures, and the time-limit for the receipt of the requests to participate referred to in the first phrase of point (a) of paragraph 3, in restricted and negotiated procedures, may be shortened by seven days.***

***6. The time-limits for receipt of tenders in open, restricted and negotiated procedures referred to in paragraph 2 point (b) of paragraph 3 and paragraph 4 may be reduced by five days where the contracting authority offers free direct access to the entire contract documents and any supporting documents by electronic means as from the date on which the notice is sent, in accordance with Annex VIII.***

***This reduction may be aggregated with the reduction referred to in paragraph 5.***

***7. The reductions in time-limits for the receipt of tenders referred to in paragraphs 5 and 6 shall not apply to particularly complex public contracts awarded under the procedural rules laid down in Article 30.***

procedures and negotiated procedures with publication of a contract notice referred to in Article 29.

The shortened time-limits referred to in the first subparagraph shall be permitted, provided that the indicative notice has included all the information required in the model contract notice and was sent for publication between no less than 52 days and no more than twelve months before the date on which the contract notice was sent.



Amendment 71  
Article 40, paragraph 4, point (g)

(g) any other specific condition for taking part in the tendering procedure.

(g) any other specific condition for taking part in the tendering procedure ***that does not unduly discriminate between tenderers.***

Amendment 72  
Article 41 a (new)

***Article 41a***

***Completion of award procedure***

***Award procedures shall be completed by the award of the contract or cancellation.***

***Award procedures may be cancelled only if***

***(a) no tender has been received which fulfils the terms and conditions of the contract notice, or***

***(b) there are other serious grounds which lie outside the powers of the contracting authority.***

Amendment 131  
Article 42, paragraph 1, subparagraph 1

1. All communication and information exchange mentioned in this Title may be performed by letter, fax or electronic means, ***according to the choice of the contracting authority.***

1. All communication and information exchange mentioned in this Title may be performed by letter, fax or electronic means.

Amendment 73  
Article 42, paragraph 1, subparagraph 2a (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 74  
Article 42, paragraph 2

2. Communication and information exchange shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and of all information supplied by economic operators are preserved, and that the contracting authorities only examine the content of tenders after the time-limit set for submitting them has expired.

2. Communication and information exchange **and the storage, holding and processing of information** shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and of all information supplied by economic operators are preserved, and that the contracting authorities only examine the content of tenders after the time-limit set for submitting them has expired.

Amendment 75  
Article 42, paragraph 4 a (new)

**4a. Contracting authorities 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 76  
Article 44, paragraph 2

2. Under Section 2, the contracting authorities may determine the level of capacity and experience required for a specific contract.

2. Under Section 2, the contracting authorities may determine the level of capacity and experience required for a specific contract. ***A lack of experience may be offset by evidence of special capacity.***

6. The extent of the information referred to in Articles 48 and 49 and the capacity level required for a specific contract shall be ***confined and*** proportionate to the subject-matter of the contract. In handling this information contracting authorities ***shall take into consideration the legitimate interests of the economic operators as regards the protection of their technical or trade secrets.***

6. The extent of the information referred to in Articles 48 and 49 and the capacity level required for a specific contract shall be proportionate to the subject-matter of the contract. In handling this information contracting authorities ***are obliged, during and after the contracting procedure, to respect technical or trade secrets, the confidentiality of tenders and outline solutions and any other confidential information communicated by the economic operator.***

Amendment 78

Article 45 a (new)

***Article 45a***

***Qualification systems***

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

***Contracting authorities which establish or operate a system of qualification shall ensure 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 24 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 to interested economic operators the names of such other authorities or bodies.*

*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 34(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.*

Amendment 80

Article 46, paragraph 1, point (ca) (new)

*(ca) of money laundering within the meaning of Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering<sup>(1)</sup>;*

<sup>(1)</sup> *OJ L 166, 28.6.1991, p. 77.*

Amendment 81

Article 46, paragraph 1, point (cb) (new)

*(cb) of fraudulent or other forms of dishonest anti-competitive behaviour in connection with the award of public contracts in the common market;*

Amendment 82  
Article 46, paragraph 1, point (cc) (new)

*(cc) following non-compliance with rules and legislation on collective agreements and other employment-related and social aspects in the country in which they are established or in another relevant country (e.g. that of the previous client);*

Amendment 83  
Article 46, paragraph 1, point (cd) (new)

*(cd) of a drugs-related offence within the meaning of Article 3(1)(a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on 19 December 1988 in Vienna;*

Amendment 84  
Article 46, paragraph 2, point (a)

*(a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;*

*Deleted*

Amendment 85  
Article 46, paragraph 2, point (c)

(c) has been convicted by a judgment of any offence concerning his professional conduct;

(c) has been convicted by a *final* judgment, *pursuant to the law of the Member State in question*, of any offence concerning his professional conduct;

Amendment 86  
Article 46, paragraph 2, point (d)

(d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;

(d) has been guilty of grave professional misconduct, ***including the violation of international core labour standards as defined in Annex IX b and infringement of fundamental European legislation relating to employment protection and working conditions***, proven by any means which the contracting authorities can demonstrate;

Amendment 87  
Article 46, paragraph 2, point (ea) (new)

***(ea) has not fulfilled employment protection obligations towards workers and labour law obligations towards their representatives in accordance with the applicable legal provisions, including those in legislation, collective agreements and contracts; in order to justify exclusion from tender procedures, such non-compliance must have been established by a final judgment handed down by an ordinary court; such exclusion, and the duration thereof, may not be disproportionate to the importance of the offence;***

Amendment 88  
Article 46, paragraph 2, point (h)

***(h) has been convicted by a judgment of fraud or any other illegal activity within the meaning of Article 280 of the Treaty, other than those within point (c) of paragraph 1 of this Article.***

***Deleted***

Amendment 89  
Article 46, paragraph 2, point (ha) (new)

*(ha) has been convicted by a judgment of failing, or can be shown by the contracting authorities to have failed, to meet his obligations with regard to the health and safety of workers in relation to Community law or the legislation of the countries in question.*

Amendment 90  
Article 46, paragraph 2 a (new)

*2a. Economic operators who are bankrupt or are being wound up, whose affairs are being administered by the court, who have entered into an arrangement with creditors, who have suspended business activities or who are in any analogous situation arising from a similar procedure under national laws and regulations shall be excluded from participation in the award procedure.*

Amendment 92  
Article 49, paragraph 2, points (b) and (c)

(b) a description of the supplier's technical facilities, his measures for ensuring quality and *its* study and research facilities;

(c) indication of the technicians or technical bodies involved, whether or not belonging directly to the supplier, especially those responsible for quality control;

(b) a description of the supplier's technical facilities, his measures for ensuring quality, ***environmental protection and protection of the health and safety of workers***, and *his* study and research facilities;

(c) indication of the technicians or technical bodies involved, whether or not belonging directly to the supplier, especially those responsible for quality control, ***environmental management and protection of the health and safety of workers*** ;

Amendment 93  
Article 49, paragraph 3, point (c)

(c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the service provider, especially those responsible for quality control;

(c) an indication of the technicians or technical bodies involved, whether or not belonging directly to the service provider, especially those responsible for quality control, ***environmental management or the health and safety of workers***;

Amendment 94  
Article 49, paragraph 4, introductory phrase

4. In the procedures for awarding public works contracts, evidence of the contractor's technical capability may be furnished by:

4. In the procedures for awarding public works contracts, evidence of the contractor's technical capability ***and reliability*** may be furnished by:

Amendment 95  
Article 49, paragraph 4, point (e a) (new)

***(ea) a description of the contractor's environmental management practices;***

Amendment 97  
Article 50 a (new)

***Article 50a***

***Environmental management standards***  
***Should contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the***



*relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. 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 who have no access to such certificates or no possibility of obtaining them within the relevant time-limits.*

Amendment 153  
Article 52 a (new)

*Article 52a*

*Private law certification bodies*

*In order to ensure achievement of the objectives referred to in Articles 1, 2 and 3, Member States may make provision for the check on the requirements referred to in Articles 46, 47, 48, 49 and 50 to be carried out by specifically authorised certification bodies established in private law.*

Compromise amendment 176  
Article 53, paragraph 1, point (b)

(b) when award is made to the most economically advantageous tender *for the contracting authorities*, various criteria *directly* linked to 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.

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

Amendment 99  
Article 53, paragraph 2

2. In the case referred to in point (b) of paragraph 1, the contracting authority shall specify the ***relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.***

(a) in the contract notice or in the contract documents in the case of open procedures;

(b) in the contract notice in the case of restricted and negotiated procedures.

***This weighting can be expressed by providing for a range within which the value attributed to each criteria shall be stated.***

In restricted and negotiated procedures, the contracting authority may, exceptionally, and in duly justified cases, state this ***weighting*** in the contract documents or in the invitation to tender. Under the same conditions and in the case of particularly complex contracts awarded under the procedural rules laid down in Article 30, this ***weighting*** shall be stated in the invitation to negotiate.

2. In the case referred to in point (b) of paragraph 1, the contracting authority shall specify the ***selection criteria in order of importance.***

(a) in the contract notice or in the contract documents in the case of open procedures;

(b) in the contract notice in the case of restricted and negotiated procedures.

In restricted and negotiated procedures, the contracting authority may, exceptionally, and in duly justified cases, state this ***order of importance of the criteria*** in the contract documents or in the invitation to tender. Under the same conditions and in the case of particularly complex contracts awarded under the procedural rules laid down in Article 30, this ***order of importance*** shall be stated in the invitation to negotiate.

Amendment 100  
Article 54, paragraphs 1 and 2

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 and shall verify, after due hearing of the parties, those constituent elements taking account of the explanations received.

The contracting authority shall take into consideration explanations relating to:

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

If, for a given contract, tenders appear to be abnormally low, 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 and shall verify, after due hearing of the parties, those constituent elements taking account of the explanations received.

The contracting authority shall take into consideration explanations relating to:

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

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

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

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

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

***(ca) the fulfilment of obligations relating to employment protection provisions and working conditions by the tenderer and subcontractors in the performance of the contract, including - in the case of supply of goods and services originating from third countries – compliance with internationally agreed core labour standards referred to in Annex IX b in their production.***

Amendment 102  
Article 61, paragraph 1

1. All communication and information exchange mentioned in this Title may be performed by letter, fax or electronic means, ***according to the choice of the contracting authority.***

1. All communication and information exchange mentioned in this Title may be performed by letter, fax or electronic means.

Amendment 103  
Article 61, paragraph 1 a (new)

***1a. 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 104  
Article 61, paragraph 2

2. The communication and information exchange covered by this Title shall be carried out in such a way as to ensure that the integrity and confidentiality of all information supplied by service providers are preserved, and that the contracting authorities may only examine the content of plans and projects after the time-limit set for submitting these has expired.

2. The communication and information exchange ***and the storage, holding and processing of information*** covered by this Title shall be carried out in such a way as to ensure that the integrity and confidentiality of all information supplied by service providers are preserved, and that the contracting authorities may only examine the content of plans and projects after the time-limit set for submitting these has expired.

Amendment 107  
Article 78, paragraph 1

1. In accordance with the procedure referred to in Article 76(2), the Commission may amend:

***(a) the calculations methods set out in the second subparagraph of Article 77(1) and in paragraph 3 of that Article;***

***(b) the conditions for the drawing-up, transmission, receipt, translation, collection and distribution of the notices referred to in Articles 34, 59, 65 and in the first subparagraph of Article 71(1), and the statistical reports provided for in the third subparagraph of Article 34(3) and Articles 74 and 75;***

***(c) the special conditions of reference to the CPV nomenclature in the notices;***

(d) the lists of bodies and categories of bodies governed by public law in Annex III, when, in particular on the basis of the notifications from the Member States, amendments appear necessary;

(e) the lists of central government authorities in Annex IV, following any adaptations which might prove necessary subsequent to the agreements concluded within the World Trade Organisation;

***(f) the nomenclature set out in Annex I, in so far as this does not change the material***

1. In accordance with the procedure referred to in Article 76(2), the Commission may amend:

(d) the lists of bodies and categories of bodies governed by public law in Annex III, when, in particular on the basis of the notifications from the Member States, amendments appear necessary;

(e) the lists of central government authorities in Annex IV, following any adaptations which might prove necessary subsequent to the agreements concluded within the World Trade Organisation.

*scope of the Directive, and the reference in the notices to particular provisions in the nomenclature within the categories of services listed in the said Annexes;*

*(g) the nomenclature set out in Annex II, in so far as this does not change the material scope of the Directive, and the conditions of reference to particular positions of the nomenclature in the notices;*

*(h) Annex VIII.*

Amendment 108  
Article 81 a (new)

#### *Article 81a*

##### *Monitoring Mechanisms*

*Member States shall be required to 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.*

Amendment 109  
Annex VI, point 1

1. (a) ‘technical specification’, in the case of public service or supply contracts, means a specification in a document defining the required characteristics of a product, such as quality levels, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling and conformity assessment procedures;

(b) ‘technical specification’, in the case of public works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

1. (a) ‘technical specification’, in the case of public service or supply contracts, means a specification in a document defining the required characteristics of a product **or service**, such as quality levels, **environmental performance/compatibility, design for all requirements (including accessibility for disabled people) and** use of the product, safety, **environmental impact** or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, **user instructions**, and conformity assessment procedures;

(b) ‘technical specification’, in the case of public works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of conformity assessment, **environmental performance/compatibility, design for all requirements (including accessibility for disabled people) and** performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, **user instructions**, packaging, marking and labelling **and production processes or methods**. They shall also include rules relating to design and costing, the test, inspection and acceptance, conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is

in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

Amendment 110

Annex VII A, Prior information notice, point 1

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

1. The name, address, ***telephone and*** telefax number, electronic 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, health and safety at work and working conditions applicable in the place where the contract is to be performed.***

Amendment 111

Annex VII A, Prior information notice, point 1 a (new)

***1a. Name, address, telephone and telefax number and electronic address of the body responsible for verification.***

Amendment 112

Annex VII A, Contract notices, point 11, indent (a)

(a) Name ***and*** address of the service from which contract documents and additional documents can be requested;

(a) Name, address, ***telephone and telefax number and electronic address*** of the service from which contract documents and additional documents can be requested;

Amendment 113  
Annex VII A, Contract notices, point 24 a (new)

***24a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.***

Amendment 114  
Annex VII A, Contract award notices, point 12 a (new)

***12a. Name and address of the body responsible for appeal procedures. Precise information concerning the deadline for lodging appeals.***

Amendment 115  
Annex VIII, point 1, indent (da) (new)

***(da) Public websites containing notices and other relevant information on tenders shall comply with the Web Accessibility Initiative Guidelines.***

Amendment 117  
Annex IX a (new)

***Annex IX a***

***Requirements relating to systems for the electronic reception of tenders/requests to participate***

***Systems for the electronic reception of tenders/requests to participate must at least guarantee, by appropriate technical means and procedures, that:***

***(a) electronic signatures relating to tenders/requests to participate comply with national legislation implementing the provisions of Directive 1999/93/EC;***



*(b) the exact time and date of submission can be precisely determined;*

*(c) there is a reasonable certainty of ensuring that nobody can have access to the information transmitted in line with these requirements before the time-limits specified;*

*(d) if this prohibition on access is infringed, there is a reasonable certainty of ensuring that any such infringement is clearly detectable;*

*(e) only duly authorised persons may set or change the dates for opening the data transmitted;*

*(f) only simultaneous action by duly authorised persons can allow access to all the information submitted, or to part of such information during the various successive phases of the contract award procedure;*

*(g) simultaneous action by duly authorised persons cannot give access to the data transmitted until after the specified date;*

*(h) any data submitted and opened pursuant to these requirements shall remain accessible only to duly authorised persons.*

Amendment 116  
Annex IX b (new)

*Annex IX b*

*Core international labour standards within the meaning of Article 54(ca) 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.*

*In addition companies should be evaluated according to a common methodology for reporting on and recording compliance with internationally agreed core labour standards. This information could be included in the company's annual report and would allow a proper and fair assessment of compliance with internationally agreed social and environmental standards. Companies that comply with and therefore promote international standards effectively and consistently should be favoured above those showing less regard for core labour standards.*

**European Parliament legislative resolution on the 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 (COM(2000) 275 – C5-0367/2000 – 2000/0115(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 275<sup>1</sup>),
  - having regard to Article 251(2) and Articles 47(2), 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0367/2000),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the Internal Market, the opinions of the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Industry, External Trade, Research and Energy (A5-0378/2001),
1. Approves the Commission proposal as amended;
  2. Asks to be consulted again if the Council intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 29 E, 30.1.2001, p. 11.

## Procurement procedures of entities in water, energy and transport sectors \*\*\*I

### Proposal for a European Parliament and Council directive coordinating the procurement procedures of entities operating in the water, energy and transport sectors (COM(2000) 276 – C5-0368/2000 – 2000/0117(COD))

The proposal was amended as follows:

Text proposed by the Commission <sup>1</sup>	Amendments by Parliament
	Amendment 1 Recital 2
<p>(2) The procedures for the award of contracts which are applied by entities operating in the water, energy and transport sectors call for a coordination based on 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 equality of treatment, of which the principle of non-discrimination is no more than a specific expression, mutual recognition, transparency and the opening-up of public procurement to competition. Whilst <b><i>ensuring the application of those principles</i></b>, this coordination should establish a framework for sound commercial practice and should allow a maximum of flexibility.</p>	<p>(2) The procedures for the award of contracts which are applied by entities operating in the water, energy and transport sectors call for a co-ordination based on <b><i>the aim of guaranteeing a high standard of reliable services of general interest at affordable prices and</i></b> 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 equality of treatment, of which the principle of non-discrimination is no more than a specific expression, mutual recognition, transparency and the opening-up of public procurement to competition. Whilst <b><i>taking into account the overall aims laid down in Articles 2 and 6 of the EC Treaty</i></b>, this co-ordination should establish a framework for sound commercial practice and should allow a maximum of flexibility.</p>
	Amendment 111 Recital 2 a (new)
	<b><i>(2a) Nothing in this Directive prevents any contracting authority from imposing or enforcing measures necessary to protect public morality, public policy, public</i></b>

<sup>1</sup> OJ C 29 E, 30.1.2001, p. 112.

*security, and human, animal or plant health and life, in conformity with the Treaty, in particular with a view to sustainable development, provided that those measures are non-discriminatory and do not run counter to the objective of opening up the public procurement market.*

Amendments 89 and 96

Recital 3 a (new)

*(3a) In accordance with Article 6 of the Treaty, environmental protection requirements must be integrated into the definition and implementation of Community policies and activities, in particular with a view to promoting sustainable development. This should also include policies and activities concerned with the construction of the internal market and directives on public procurement in particular. The Directive therefore integrates Community policy on environmental protection and sustainable development into the public procurement regime.*

Amendment 4

Recital 4 a (new)

*(4a) Given that contracting authorities may require particular conditions concerning performance of the contract, provided that those conditions are compatible with Community law, it follows that conditions may be imposed relating to the promotion of social and employment policy objectives, including conditions to favour employment of excluded or disadvantaged people or to combat unemployment.*

Amendment 5  
Recital 8

(8) The need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in the **water, energy and transport** sectors requires that the entities to be covered must be identified on a basis other than by reference to their legal status. It has to be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 295 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.

(8) ***The reason for regulating the water, energy and transport sectors by means of this Directive is that the entities which provide services in those areas are in certain cases public ones and, in other cases, private ones.*** The need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in the **abovementioned** sectors requires that the entities to be covered must be identified on a basis other than by reference to their legal status. It has to be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 295 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.

Amendment 6  
Recital 28

(28) It is appropriate to exclude certain **service** contracts awarded to an affiliated undertaking having as its principal activity, **with respect to services**, the provision of **such** services to the group of which it is part, rather than the offering of **its** services on the market.

(28) It is appropriate to exclude certain contracts awarded to an affiliated undertaking **or a joint venture** having as its principal activity the provision of **supplies and/or other** services to the group **or groups** of which it is part, rather than the offering of **such supplies and** services on the market.

Amendment 7  
Recital 34

(34) The technical specifications drawn up by public procurers must allow public procurement to be opened up to competition. To this end, it must be possible to submit bids which reflect the diversity of possible technical solutions. In order to do this, it has to be possible, on the one hand, to draw up technical specifications in terms of

(34) The technical specifications drawn up by public procurers must allow public procurement to be opened up to competition. To this end, it must be possible to submit bids which reflect the diversity of possible technical solutions. In order to do this, it has to be possible, on the one hand, to draw up technical specifications in terms of

functional performance and requirements; on the other hand, where reference is made to a European standard - or, where no such standard exists, to a national standard - **other, equivalent solutions must be accepted.** To demonstrate equivalence, tenderers should be permitted to use any form of evidence. **Reference to specifications specifying a particular origin must remain the exception.**

functional performance and requirements; on the other hand, where reference is made to a European standard - or, where no such standard exists, to a national standard - **contracting authorities must take into account tenders based on other solutions meeting the contracting authority's requirements in an equivalent way.** To demonstrate equivalence, tenderers should be permitted to use any form of evidence. **The contracting authority must give reasons for any decision concluding that there is no equivalence.**

Amendment 8  
Recital 42

(42) The award criteria should not affect the application of national provisions on the remuneration of certain services, such as, for example, the services performed by architects or lawyers.

(42) The award criteria should not affect the application of national provisions on the remuneration of certain services, such as, for example, the services performed by architects, **engineers** or lawyers.

Amendment 9  
Recital 42 a (new)

**(42a) Contracting entities may reject tenders that are abnormally low owing to non-compliance with minimum social requirements.**

Amendment 123  
Article 1, paragraph 7

7. A "framework **agreement**" means an agreement between one of the contracting entities referred to in Article 2(2) and one or more economic operators, the purpose of which is to establish the terms, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period.

7. A "framework **contract**" means an agreement between one of the contracting entities referred to in Article 2(2) and one or more economic operators, the purpose of which is to establish the terms, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period.

Amendment 10  
Article 1, paragraph 7a (new)

***7a. 'Framework contracts' in the translation and interpreting services sector are identical contracts entered into with several service providers. Translation and interpreting service providers shall be classified in order on the basis of the award criteria and actual merit in contract performance. Actual merit shall be assessed at intervals, in compliance with the principle of equal opportunities.***

Amendment 11  
Article 1, paragraph 9

9. 'Design contests' means the national procedures which enable the contracting entity to acquire, mainly in the fields of architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition, with ***or without*** the award of prizes.

9. 'Design contests' means the national procedures which enable the contracting entity to acquire, mainly in the fields of architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition, with the award of prizes.

Amendment 106  
Article 2, paragraph 1, point (a)

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

"A body governed by public law" shall be understood to mean any body which:

- is established for the specific purpose of meeting needs in the general interest, ***not having an industrial or commercial character***,
- has legal personality, and
- is financed for the most part by the State,

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

"A body governed by public law" shall be understood to mean any body which:

- is established for the specific purpose of meeting needs in the general interest,
- has legal personality, and
- is financed for the most part by the State,



or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law.

or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law.

#### Amendment 13

##### Article 2, paragraph 2, points (a) and (b)

(a) which are public authorities or public undertakings and which pursue one of the activities referred to in Articles 3 to 6;

(b) which, when they are not public authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 3 to 6, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

(a) which are public authorities or public undertakings and which pursue one of the activities referred to in Articles 3 to **6a**;

(b) which, when they are not public authorities or public undertakings, have as one of their activities any of the activities referred to in Articles 3 to **6a**, or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

#### Amendment 14

##### Article 2, paragraph 3

3. For the *purposes of this Directive*, special or exclusive rights mean rights *which arise from a grant made* by the competent authorities of *a Member State by way of any legislative, regulatory or administrative provision* the effect of which is to *limit* the exercise of *activities* defined in *Articles 3 to 6* 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*.

3. For the *purpose of applying point (b) of paragraph 2*, special or exclusive rights *shall* mean rights *deriving from authorisations granted* by the competent authorities of *the Member State concerned, by law, regulation or administrative action*, the effect of which is to *reserve for* one or more entities the exercise of *an activity* defined in *paragraph 2*.

*A contracting entity shall be considered to enjoy special or exclusive rights in particular where:*

*(a) for the purpose of constructing networks or facilities under the activities referred to in paragraph 2, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway;*

*(b) in the case of point (a) of paragraph 2, the entity supplies with drinking water, electricity, gas or heat a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned.*

Amendment 16  
Article 6 a (new)

#### *Article 6a*

##### *Provisions governing postal services*

*1. This Directive shall apply to activities relating to the supply of postal services.*

*2. Postal services which can generally be supplied by other agencies on an unrestricted basis or subject to a licensing procedure by the competent authority shall not be regarded as an activity within the meaning of paragraph 1.*

*3. This Directive shall not apply to contracts for acquisition by contracting entities exercising an activity within the meaning of paragraph 1 for their own undertaking where the possibility exists that other undertakings can offer in the same area all postal services of not only secondary economic importance on broadly the same terms.*

Amendment 18  
Article 10, paragraph 1

1. Tenders may be submitted and negotiations conducted by groupings of economic operators. The conversion of such groupings into a specific legal form shall not be required for the purpose of their submitting a tender or negotiating, but the grouping selected may be required so to convert itself once it has been awarded the contract, where such conversion is necessary for the proper performance of the contract.

1. Tenders may be submitted and negotiations conducted by groupings of economic operators, **and the persons taking part may also meet the selection criteria specified by the contracting entities pursuant to Articles 53(1) to (3) cumulatively. The length of any professional experience requested by the contracting entity may not be accumulated. There may be a requirement for minimum criteria to be met by at least one of the members of the group, who shall act as its head.** The conversion of such groupings into a specific legal form shall not be required for the purpose of their submitting a tender or negotiating, but the grouping selected may be required so to convert itself once it has been awarded the contract, where such conversion is necessary for the proper performance of the contract.

Amendment 124  
Article 13

1. Contracting entities may regard a framework **agreement** as a contract within the meaning of Article 1(2) and award it in accordance with this Directive.

2. **Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of point (i) of Article 36(3) when awarding contracts based on that framework agreement.**

3. **Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of point (i) of Article 36(3).**

1. Contracting entities may regard a framework **contract** as a contract within the meaning of Article 1(2) and award it in accordance with this Directive.

2. Framework **contracts shall be awarded** in accordance with **the provisions of** this Directive.

4. Contracting entities may not misuse framework **agreements** in order to hinder, limit or distort competition.

4. Contracting entities may not misuse framework **contracts** in order to hinder, limit or distort competition.

Amendment 19

Article 14, paragraph 1 a (new)

***Nothing in this Directive shall be construed to prevent any contracting entity from imposing or enforcing measures necessary to protect public order or safety or human, animal or plant life or health, in particular with a view to sustainable development.***

Amendment 21

Article 19, paragraph 6, point (a)

(a) the premium payable, in the case of insurance services;

(a) the premium payable, ***as well as other, comparable types of remuneration,*** in the case of insurance services;

Amendment 22

Article 19, paragraph 7, point (b)

(b) in the case of contracts of indefinite duration ***or*** with a term of more than 48 months, the monthly value multiplied by 48.

(b) in the case of contracts of indefinite duration, ***contracts including a tacit renewal clause or contracts*** with a term of more than 48 months, the monthly value multiplied by 48.

Amendment 23

Article 22

This Directive shall not apply to contracts when they are declared to be secret by a Member State, when their execution must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in

This Directive shall not apply to contracts when they are declared to be secret by a Member State, when their execution must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned, or

force in the Member State concerned, or when the protection of the basic security interests of that State so requires.

when the protection of the basic security interests of that State so requires. *The Commission may ask Member States to provide additional information regarding certain contracts so that it can decide whether or not this Article is applicable to those contracts.*

Amendment 25  
Article 25

**Service** contracts awarded on the basis of an exclusive right

This Directive shall not apply to **service** contracts awarded to an entity which is itself a public authority within the meaning of point (a) of Article 2(1) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

Contracts awarded on the basis of an exclusive right

This Directive shall not apply to contracts awarded to an entity which is itself a public authority within the meaning of point (a) of Article 2(1) on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.

Article 26, Title

**Service** contracts awarded to an affiliated undertaking or to **a contracting** entity forming part of a joint venture

Contracts awarded to an affiliated undertaking or to **an** entity forming part of a joint venture

Amendment 27  
Article 26, paragraph 1

1. This Directive shall not apply to **service** contracts which:

1. This Directive shall not apply to contracts which **an undertaking** awards to an affiliated undertaking **or a joint venture, its participation in which amounts to at least 50% of the average turnover of that undertaking within the Community for the preceding three years deriving from the provision of services or supplies to undertakings with which it is affiliated. This shall also apply if the undertaking has not yet been in existence for three years on**

(a) a contracting entity awards to an affiliated undertaking;

(b) are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying on activities within the meaning of Articles 3, 4, 5 or 6 to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities,

provided that at least 80% of the average turnover of that undertaking with respect to services arising within the Community for the preceding three years derives from the provision of such services to undertakings with which it is affiliated.

Where more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover in the Community deriving from the provision of services by those undertakings shall be taken into account.

*condition that the turnover figure required is likely to be attained after the first three years.*

*This Directive shall not apply to contracts which a joint venture awards to one of the undertakings which have set it up or to an undertaking which is affiliated to one of these undertakings.*

*For the purposes of this article, 'joint venture' shall mean an undertaking which has been set up by more than one principal for the purpose of activities referred to in Articles 3 to 6.*

Amendment 28  
Article 26, paragraph 3, point (b)

(b) the nature and value of the *service* contracts involved,

(b) the nature and value of the contracts involved,

Amendment 29  
Article 27, title and paragraph 1

Contracts awarded by certain contracting entities for the purchase of water

Contracts awarded by certain contracting entities for the purchase of water *or for the supply of energy or fuels for the production of energy*

1. This Directive shall not apply to contracts which contracting entities engaged in the activity referred to in Annex I award for the purchase of water.

1. This Directive shall not apply to contracts

(a) which contracting entities engaged in the activity referred to in Annex I award for the purchase of water,

**(b) which contracting entities engaged in the activities referred to in Annexes II, III, IV and V award for the purchase of energy or fuels for the production of energy.**

Amendment 30  
Article 27, paragraph 2

2. The Council shall reexamine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals.

2. The Council shall reexamine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals, **and shall adopt any necessary amending legislation under the procedure provided for in Article 251 of the Treaty.**

Amendment 31  
Article 29

1. Where they are awarded by contracting entities other than public authorities within the meaning of point (a) of Article 2(1) contracts intended to permit the performance of a service mentioned in Articles 3 to 6 shall not be subject to this Directive if, in the Member State in which the activity is to be performed, **it is directly exposed to competition on markets to which access is not restricted.**

**2. For the purposes of paragraph 1, the question of whether an activity is directly exposed to competition shall be decided on the basis of criteria such as the characteristics of the goods or services concerned, the existence of alternative goods or services, prices and the actual or potential presence of more than one supplier of the goods or services in question.**

**3. For the purposes of paragraph 1, access to a market shall be deemed not to be restricted if the Member State has implemented and applied the provisions of Community legislation mentioned in Annex X.**

1. Where they are awarded by contracting entities other than public authorities within the meaning of point (a) of Article 2(1) contracts intended to permit the performance of a service mentioned in Articles 3 to 6 shall not be subject to this Directive if **access to the activity is not restricted** in the Member State in which the activity is to be performed.

**2. Access to the activity shall be deemed not to be restricted if the Member State has transposed and implemented the provisions of Community legislation liberalising that activity.**

***4. In order to benefit from an exemption under paragraph 1, a Member State shall ask the Commission to grant an exemption.***

***That Member State shall, taking account of paragraphs 2 and 3, inform the Commission of all relevant facts, and in particular of any law, regulation, administrative provision or agreement concerning compliance with the conditions set out in paragraph 1.***

***If an independent authority that is competent in the activity concerned has adopted a position regarding questions relevant to paragraphs 1 and 2, its opinion shall be sent to the Commission.***

***Where the Commission intends to grant an exemption, it shall adopt its decision in accordance with the procedure under Article 65(2). It shall publish its decision in the Official Journal of the European Communities.***

***5. For the adoption of a decision under paragraph 4, the Commission shall be allowed a period of six months commencing from a date determined in accordance with the provisions set out in paragraphs 6, 7 and 8. If free access to a given market cannot be presumed on the basis of paragraph 3, a Member State seeking exemption must demonstrate that access to the market in question is free de facto and de jure. If, at the end of this period, the Commission has not adopted a decision as to exemption, paragraph 1 shall be deemed to be applicable.***

***6. Without prejudice to paragraphs 7 or 8, the period laid down in paragraph 5 shall commence on the first working day following the date on which the request in accordance with paragraph 4 is received by the Commission.***

***7. If, during the procedure, the Commission finds that the information contained in the request or in the documents annexed thereto is incomplete or inexact, it shall inform the Member State concerned in writing without delay and fix an appropriate time-limit by which the***



*information is to be completed. In that event, the six-month period shall run from the date on which the Commission receives the complete information.*

*8. If the facts as reported in the request undergo any substantive changes those changes shall be communicated to the Commission without delay. In that event, if the substantive changes are liable to influence significantly its assessment under paragraph 1, the Commission may deem notification to have taken effect on the date on which the changes in question were received. It shall inform the Member State concerned of this without delay in writing.*

*9. The Commission may also begin the procedure for adoption of an exempting decision at its own initiative.*

Amendment 117  
Article 29, paragraph 9a (new)

*9a. The enterprises concerned shall inform the Commission of the operations which they consider to be exposed to competition as referred to in paragraph 1, with a view to requesting their exemption.*

Amendment 32  
Article 33, paragraph 2

Contracting entities *may* require information on the subject of subcontracting in accordance with Article 37 *or may* stipulate conditions concerning obligations relating to employment protection provisions and working conditions in accordance with Article 38.

Contracting entities *shall* require information on the subject of subcontracting in accordance with Article 37 *and shall* stipulate conditions concerning obligations relating to *environmental protection*, employment protection provisions and working conditions in accordance with Article 38.

Amendment 33  
Article 33, paragraph 3

They may also require particular conditions concerning performance of the contract, provided that the conditions are compatible with applicable Community law.

They may also require particular conditions concerning performance of the contract, ***including the promotion of social and employment policy objectives, in particular conditions intended to favour employment of excluded or disadvantaged people or to combat unemployment,*** provided that the conditions are compatible with applicable Community law ***and are in line with the principles of equality of treatment, non-discrimination and transparency stipulated in Article 9.***

Amendments 91 and 98  
Article 34, paragraph 3, subparagraph 1

3. Technical specifications shall be formulated by reference to European standards, European technical approvals, common technical specifications, international standards or, when these do not exist, national standards or national technical approvals, as defined in Annex XX, provided that the reference is accompanied by the words ‘or equivalent’ ***or to any other technical reference produced by European standardisation bodies.***

3. Technical specifications shall be formulated by reference to European standards ***and national standards implementing European standards,*** European technical approvals, ***European eco-labels,*** common technical specifications, international standards or, when these do not exist, national standards or national technical approvals, ***pluri-national or national eco-labels, requiring third-party certification, environmental management systems or any other technical reference adopted by European standardisation bodies,*** as defined in Annex XX, provided that the reference is accompanied by the words ‘or equivalent’.

Amendment 35  
Article 34, paragraph 3, subparagraph 2

They may also be formulated in terms of ***performance or functional requirements***. They shall, however, be sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow contracting entities to award the contract.

They may also be formulated in terms of ***performance requirements, of functional requirements or of requirements with regard to the environmental impact of the product throughout its lifetime***. They shall, however, be sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow contracting entities to award the contract.

Amendment 36  
Article 34, paragraph 3 a (new)

***3a. 'Equivalent' standards mean standards which***

- are compatible with the technical, functional and performance requirements,***
- do not entail or cause any safety risks and***
- do not incur any additional costs for the contracting entity.***

Amendments 99 and 118  
Article 34, paragraph 5, subparagraph 1

5. Where a contracting entity makes use of the possibility of referring to the specifications mentioned in the first subparagraph of paragraph 3, it cannot, however, reject a tender on the grounds that the products and services tendered for do not comply with ***a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard, or a national standard, a national technical specification or a national technical approval, where the tenderer can show in his offer***, by any appropriate means, that the solutions he proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

5. Where a contracting entity makes use of the possibility of referring to the specifications mentioned in the first subparagraph of paragraph 3, it cannot, however, reject a tender on the grounds that the products and services tendered for do not comply with ***the specifications to which they have referred, provided that the tenderer proves in his tender, to the satisfaction of the contracting entity***, by any appropriate means, that the solutions he proposes satisfy in an equivalent manner the requirements defined by the technical specifications.

Amendment 38  
Article 34, paragraph 5, subparagraph 2

A technical dossier of the manufacturer or a test report from a **third-party** body **shall** constitute an ‘appropriate means’.

A technical dossier of the manufacturer or a test report from a **recognised** body **may** constitute an ‘appropriate means’.

***A contracting entity 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 non-equivalence.***

Amendment 100  
Article 34, paragraph 6, subparagraph 2

The tenderer must demonstrate in his tender, by any appropriate means, **such as a technical dossier or a third party's test report**, that the product or service fulfilling the standard meets the functional and performance requirements of the contracting entity.

The tenderer must demonstrate in his tender, by any appropriate means, that the product or service fulfilling the standard meets the functional and performance requirements of the contracting entity. ***A test report from an impartial third-party body may constitute an 'appropriate means'.***

Amendment 40  
Article 34, paragraph 7

7. Technical specifications shall not refer to a specific make or source, or to a particular process, or to a trade mark, patent, type **or a specific** origin or production. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the *subject matter* of the contract is not possible in terms of paragraphs 3 and 4; such reference **shall be accompanied by** the words ‘or equivalent’.

7. Technical specifications shall not refer to a specific make or source, or to a particular process, or to a trade mark, patent, type, origin, **specific producer or supplier** or **specific** production. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the *subject-matter* of the contract is not possible in terms of paragraphs 3 and 4; such reference **must include** the words ‘or equivalent’.

Amendment 120  
Article 37

In the specifications, the contracting entity may ask the tenderer to indicate in his tender any share of the contract *which* he may intend to subcontract to third parties and any designated sub-contractors. This indication shall be without prejudice to the question of the principal economic operator's liability.

In the specifications, the contracting entity may ***not place any quantitative restrictions on the exercise, by the undertakings, of freedom of organisation of their own inputs.*** It shall ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties and any designated sub-contractors. This indication shall be without prejudice to the question of the principal economic operator's liability. ***The contracting entity shall prohibit any subcontracting to undertakings which are in the situation referred to in Article 46 of Directive .../.../EC [on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts] and/or undertakings which do not meet the requirements laid down in Articles 47, 48 and 49 of that Directive.***

***Intellectual services, with the exception of translation and interpretation services and management and related services, may not be contracted out.***

Amendment 43  
Article 38, title

Obligations relating to employment protection provisions and working conditions

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

Amendment 45  
Article 39, 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***

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

*subsequent contracts which do seek, in particular, those ends;*

Amendment 47

Article 41, paragraph 1, subparagraph 1 a (new)

***Every call for competition shall include the information on obligations relating to employment protection provisions and working conditions in accordance with Article 38.***

Amendment 48

Article 46, paragraph 2, point (f)

(f) any other specific condition for taking part in the tendering procedure.

(f) any other specific condition for taking part in the tendering procedure ***that does not unduly discriminate between tenderers.***

Amendment 49

Article 47, paragraph 1, subparagraph 1

1. All communication and information exchange mentioned in this Part may be performed by letter, fax or electronic means, ***at the option of the contracting entity.***

1. All communication and information exchange mentioned in this Part may be performed by letter, fax or electronic means.

Amendment 50

Article 47, paragraph 1, subparagraph 2 a (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 51  
Article 47, paragraph 2, introduction

2. Communication and information exchange shall be carried out in such a way as to ensure:

2. Communication and information exchange **and the storage, holding and processing of information** shall be carried out in such a way as to ensure:

Amendment 103  
Article 47, paragraph 4 a (new)

**4a. 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 52  
Article 48, paragraph 3

3. Contracting entities who 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 who 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 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.

Amendment 53  
Article 48, paragraph 4

4. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal. The reasons must be based on the criteria for qualification referred to in Article 52(2).

4. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal **within two months**. The reasons must be based on the criteria for qualification referred to in Article 52(2).

Amendment 54  
Article 49, paragraph 2

2. The information shall be kept for at least **four** years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests

2. The information shall be kept for at least **six** years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests.

Amendment 55  
Article 49 a (new)

**Article 49a**

**Review procedures**

***The Member States shall take the measures necessary to ensure that decisions taken by the contracting entity may be reviewed effectively and, in particular, as rapidly as possible in accordance with Council Directive 89/665/EEC<sup>(1)</sup>.***

***Member States shall ensure that adequate procedures are available to workers and their representatives for the enforcement of obligations under the present Directive.***

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<sup>(1)</sup> OJ L 395, 30.12.1989, p. 33

Amendment 56  
Article 50, paragraph 1

1. Contracts shall be awarded on the basis of the award criteria laid down in Section 2, taking into account Article 36 concerning variants, after the suitability of the economic operators has been verified on the basis of the rules and criteria established in accordance with Article 53, taking into account Article 51 concerning mutual recognition.

1. Contracts shall be awarded on the basis of the award criteria laid down in Section 2, taking into account Article 36 concerning variants, ***after the tenderers or candidates have provided proof of compliance with their obligations according to Article 38(2) and*** after the suitability of the economic operators has been verified on the basis of the rules and



criteria established in accordance with Article 53, taking into account Article 51 concerning mutual recognition.

Amendment 57

Article 52, paragraph 2, subparagraph 2 a (new)

***Those criteria and rules shall include the exclusion criteria listed in Article 46 of Directive.../..EC [on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts].***

Amendment 58

Article 53, paragraph 3 a (new)

***3a. If other, sectoral Community rules contain provisions which conflict with paragraph 1, those provisions shall apply.***

Amendment 109

Article 53, paragraph 4

***4. The criteria set out in paragraphs 1 and 2 may include*** the exclusion criteria listed in Article 46 of Directive 2000/..EC [on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts].

4. The exclusion criteria listed in Article 46 of Directive 2000/..EC [on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts] ***shall apply.***

Amendment 60

Article 53, paragraph 4 a (new)

***4a. Any economic operator may be excluded from participation in the contract who:***

***(a) is bankrupt or is being wound up, whose affairs are being administered by the court, who has entered into an arrangement with creditors, who has suspended business activities or who is in any analogous situation arising from a similar procedure under national laws and regulations;***

***(b) is the subject of proceedings for a declaration of bankruptcy, for an order***

*for compulsory winding up or administration by the court or for composition with creditors or of any other similar proceedings under national laws and regulations;*

*(c) has been convicted by definitive judgment of an environmental offence during the preceding five years;*

*(d) has been convicted by a judgment of any offence concerning his professional conduct;*

*(e) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;*

*(f) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;*

*(g) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of countries concerned;*

*(h) is guilty of serious misrepresentation in supplying the information required under this Section;*

*(i) has been convicted by a judgment of fraud or any other illegal activity within the meaning of Article 280 of the Treaty, other than those within point (c) of paragraph 1 of this Article.*

Amendment 61

Article 53, paragraph 4 b (new)

*4b. Where a Member State has a system of official lists of approved economic operators as provided for in Article 52 of Directive.../EC [on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts], that system shall operate with respect to contracting entities as it does for contracting authorities.*

Amendment 62  
Article 53, paragraph 4 c (new)

***4c. The criteria and rules established and applied under the provisions of this Article shall not prejudice any conditions concerning the promotion of social and employment policy objectives required in accordance with the third paragraph of Article 33.***

Amendment 64  
Article 53 a (new)

***Article 53a***

***Environmental management standards***  
***Should contracting entities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. 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 who have no access to such certificates or no possibility of obtaining them within the relevant time-limits.***

Compromise amendment 125  
Article 54, paragraph 1, point (a)

(a) where the contract is awarded on the basis of the most economically advantageous tender **for the contracting entities, involving** various criteria **directly** 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, technical merit, after-sales service and technical assistance, commitments with regard to spare 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 those relating to production methods**, technical merit, after-sales service and technical assistance, commitments with regard to spare parts, security of supply, price, **the tenderer's equal treatment policy**; or

Amendment 66  
Article 54, paragraph 2

2. In the case referred to in point (a) of paragraph 1, the contracting entity shall specify the **relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender.**

***This weighting may be expressed as a range within which the value of each criterion is stated***

2. In the case referred to in point (a) of paragraph 1, the contracting entity shall specify the **selection criteria in order of importance in the contract documents or contract notice.**

Amendment 67  
Article 54, paragraph 3

**3. Where the means of calling for competition is a notice as referred to in point (a) of Article 41(1), the relative weighting shall be specified as follows:**

**(a) in the contract notice or in the contract documents in the case of open procedures;**

**(b) in the notice in the case of restricted and negotiated procedures.**

***In the case of point (b), the weighting may, exceptionally and in duly justified cases, be stated in the contract documents or in the***

***Deleted***

*invitation to tender.*

Amendment 68  
Article 54, paragraph 4

**4. Where, in restricted or negotiated procedures, the means of calling for competition is a notice on the existence of a system of qualification, the relative weighting shall be specified as follows:** **Deleted**

**(a) in the notice used as a means of calling for competition, if the weighting is known at the time of sending the notice for publication;**

**(b) otherwise, in the contract documents or the invitation to tender.**

Amendment 69  
Article 54, paragraph 5

**5. Where, in restricted or negotiated procedures, the means of calling for competition is a periodic indicative notice, the relative weighting shall be specified as follows:** **Deleted**

**(a) in the notice used as a means of calling for competition, if the weighting is known at the time of sending the notice for publication;**

**(b) otherwise, in the invitation to confirm the interest referred to in Article 46(3) or, at the latest, in the contract documents or in the invitation to tender.**

Amendment 70  
Article 55, paragraph 1

If, for a given contract, tenders appear abnormally low in relation to the service to be provided, the contracting entity shall, before it may reject those tenders, request in writing an explanation of the constituent elements of the tender which it considers relevant and, after hearing the interested party, shall verify those constituent

If, for a given contract, tenders appear abnormally low in relation to the **supply**, service **or works** to be provided, the contracting entity shall, before it may reject those tenders, request in writing an explanation of the constituent elements of the tender which it considers relevant and, after hearing the interested party, shall

elements, taking account of the explanations received. It may set a reasonable period within which to reply.

verify those constituent elements, taking account of the explanations received. It may set a reasonable period within which to reply.

Amendment 71  
Article 57, 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* 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;

*(ca) does not comply with the international labour standards referred to in Annex XXIa.*

Amendment 73  
Article 62, paragraph 1, subparagraph 1

1. All communications and exchanges of information mentioned in this Directive may be effected by letter, by fax or by electronic means, *at the option of the contracting entity.*

1. All communications and exchanges of information mentioned in this Directive may be effected by letter, by fax or by electronic means.

Amendment 74  
Article 62, paragraph 1, subparagraph 2 a (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 75  
Article 62, paragraph 2, introduction

2. This communication and information exchange must be carried out in such a way as to ensure:

2. This communication and information exchange ***and the storage, holding and processing of information*** must be carried out in such a way as to ensure:

Amendment 76  
Annex X, letter E

***Directive 94/22/EC if the requirements apply also to coal and other solid fuels, pursuant to Member States' legislation.***

Amendment 77  
Annex X, letter F

***Council Directive 91/440 /EEC of 29 July 1991 on the development of the Community's railways<sup>(1)</sup>***

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<sup>(1)</sup> OJ L 237, 24.8.1991, p. 25.

Amendment 78  
Annex XII, Part A, point 21 a (new)

***21a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.***

Amendment 79  
Annex XII, Part B, point 19 a (new)

***19a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.***

Amendment 80  
Annex XII, Part C, point 20 a (new)

***20a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.***

Amendment 81  
Annex XIII, point 7 a (new)

***7a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.***



Amendment 82  
Annex XIV, point 14 a (new)

***14a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.***

Amendment 83  
Annex XV, point 20 a (new)

***20a. Name and address of the body responsible for appeal. Precise information concerning deadlines for lodging appeals.***

Amendment 84  
Annex XVI A, Category 6, point (b)

***(b) banking and investment services<sup>(2)</sup>***                      ***Deleted***

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***(<sup>2</sup>) Except contracts for the issue, sale, purchase or transfer of securities or other financial instruments***

Amendment 85  
Annex XVII, point 15 a (new)

***15a. Name and address of the body responsible for appeal and, where appropriate, mediation procedures. Precise information concerning deadlines for lodging appeals.***

Amendment 86  
Annex XVIII, point 10 a (new)

**10a. Name and address of the body responsible for appeal. Precise information concerning deadlines for lodging appeals.**

Amendment 95  
Annex XX, point 1

1. "Technical specification" means a specification contained, in particular, in the contract documents setting out the required characteristics of a product or service, such as the level of quality or performance, safety or dimensions, including the requirements applicable to the product or service concerning the trade name, terminology, symbols, testing and test methods, packaging, marking or labelling and conformity assessment procedures.

It includes, where applicable, the 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 constituent materials or parts.

1. "Technical specification" means a specification contained, in particular, in the contract documents setting out the required characteristics of a product or service, such as the level of quality or performance, **environmental impact, design for all requirements (including accessibility for disabled people)**, safety or dimensions, including the requirements applicable to the product or service concerning the trade name, terminology, symbols, testing and test methods, packaging, marking or labelling, **user instructions** and conformity assessment procedures.

It includes, where applicable, the rules relating to design and costing, the test, inspection and acceptance conditions for works, **production processes or methods**, methods or techniques of construction, **design for all standards (including accessibility for disabled people)** 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 constituent materials or parts.

*Annex XXI a*

*Core international labour standards within the meaning of point (ca) of Article 57(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.*

**European Parliament legislative resolution on the proposal for a European Parliament and Council directive coordinating the procurement procedures of entities operating in the water, energy and transport sectors (COM(2000) 276 – C5-0368/2000 – 2000/0117(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council ((COM(2000) 276<sup>1</sup>),
  - having regard to Article 251(2) and Articles 47(2), 55 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0368/2000),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the Internal Market, the opinions of the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Industry, External Trade, Research and Energy (A5-0379/2001),
1. Approves the Commission proposal as amended;
  2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 29 E, 30.1.2001, p. 112.