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from: General Secretariat  
to: Permanent Representatives Committee/Council

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Subject: Proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries  
- Outcome of the European Parliament's first reading  
(Strasbourg, 13 to 16 January 2014)

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#### **I. INTRODUCTION**

The rapporteur, Mr Daniel CASPARY (EPP, DE), presented a report on the abovementioned proposal, on behalf of the Committee on International Trade. The report contained 85 amendments (amendments 1 - 85). A further amendment had been tabled separately by the Committee (amendment 92).

In addition, 16 other amendments (amendments 86 - 91 and amendments 93 - 102) had been tabled by political groups (EPP, S&D, ALDE and EUL/NGL) or groups of 40 or more MEPs.

## II. DEBATE

The Parliament debated the proposal on 14 January 2014.

The rapporteur, Mr Daniel CASPARY (EPP, DE) opened the debate and:

- underlined that the proposal was not protectionist but aimed at opening the markets of third countries and creating a level playing field. Not all third countries were covered by the proposal, inter alia countries with whom the EU has bilateral agreements and the least developed countries;
- stated that the trade area was an exclusive EU competence and therefore it was not acceptable that Member States decide on their own rules. He had proposed to reinforce Article 1 to that effect. In addition, it should be made clear that only the Commission, and not local authorities, can decide to exclude a tenderer from a third country;
- believed that the calling into question of the exclusive competence of the EU was behind many of the arguments against the proposal. He pointed to the review clause in Article 19 which perhaps could help bring doubters of the proposal on board;
- concluded that a balanced compromise had been found in the Committee. It was agreed with the shadow rapporteurs to propose the postponement of the final vote to allow for finding a first reading agreement with the Council. He appealed to the Council to end its "silence" and enter into negotiations with the Parliament.

Commissioner DE GUCHT:

- stated that one of his main aims as Commissioner has been to open the markets of third countries for EU companies. The EU public procurement sector was one of the most open in the world and non-EU companies were welcome to the EU market subject to the same conditions as EU companies. Unfortunately, a number of third countries, including the BRIC countries (Brazil, Russia, India and China), did not reciprocate the openness of the EU;

- defended the proposal by stating that:
  - it aimed at ensuring further opportunities and greater fairness for EU businesses competing internationally, for the benefit of growth and jobs;
  - it struck a careful balance between keeping the EU procurement markets open while providing the EU with additional leverage to try to open foreign procurement markets for EU companies;
  - in this context, it would be an important addition to the EU toolbox in negotiations with third countries, including with some major emerging economies where there seemed to be a trend towards protectionist measures (India, Indonesia, Brazil and Russia);
- commented on some points of criticism and concerns by recalling that:
  - the proposal provided that the least developed countries were not covered and ensured that the proposal could not be used to opening developing countries markets whilst protecting EU markets against poor third countries;
  - the instrument would only apply when more than 50 % of the value of the goods originated from a country or countries without market access commitments;
  - the Commission, and not decentralised bodies of the Member States, would take the final decision and thus ensure a uniform application of the measures across the EU;
- welcomed the broad support in the Parliament and expressed openness to the amendments voted in the Committee. He hoped that the joint signal sent by the Parliament and the Commission on their intent to have this important legislation will influence the Council and that negotiations can start as soon as possible.

The rapporteur of the opinion of the Committee on Development, Ms Judith SARGENTINI (EFA/Greens, NL):

- had proposed to send the proposal back to the Commission but her Committee had not agreed. However, she still believed that the proposal was not the way forward;
- in this context, argued that opening up public procurement markets of third countries was also a tool to help EU's own markets. In the case of China, Brazil and India this was understandable. However, what was tabled now was the result of a coalition between those who want to get into the Chinese markets and those who want to close European markets - to the detriment of some developing countries who would also be covered by the measures because they fell under the same definition.

The rapporteur of the opinion of the Committee on the Internal Market and Consumer Protection<sup>1</sup>  
Mr Frank ENGEL (EPP, LUX):

- stated that his Committee had successfully made efforts to ensure that the proposal to the extent possible was in conformity with the texts on public procurement and concessions;
- highlighted that parts of his Committee had shown the same reticence towards the proposal as in Council. This demonstrated that an instrument was needed to assure the exclusive EU competence in the trade area.

Speaking on behalf of the EPP group, Mr Paweł ZALEWSKI (PL):

- supported the aim to ensure greater symmetry in access to procurement markets and the need to use the reciprocity principle. There should be greater openness of the markets of those partners with whom Free Trade Agreements are negotiated. Third countries were unwilling to open up markets to competition and therefore an instrument was needed to ensure that agreements were complied with;
- however, doubted whether the proposal would lead to the achievement of these objectives. He acknowledged the efforts of the rapporteur and hoped that negotiations with the Council and the Commission would improve the text.

Speaking on behalf of the S&D group, Mr Bernd LANGE (DE):

- found the compromise balanced as it ensured that public procurement markets are organised in a fair way. As demonstrated in the debate on the internal procurement rules, there was a clear position on what constitutes a fair offer and that should also be applied when it comes to offers by third country bidders;
- argued that clear rules at European level was needed and not a patchwork of individual assessments by Member States (including at local level). The compromise found established a fair balance between the rights of the contracting authority and the Commission in the assessment of whether an offer should be excluded;

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<sup>1</sup> Associated committee cf. Rule 50 of the Rules of Procedure of the Parliament.

- underlined the importance for the S&D group that an assessment of the lack of reciprocity should also cover questions on fulfilment of social and environmental standards and core labour standards;
- appealed to the Council to show the same willingness to compromise as the Parliament had demonstrated, so that legislation could be in place soon.

Speaking on behalf of the ALDE group, Mr Metin KAZAK (BG):

- congratulated the rapporteur for reaching a compromise on a clear text. It was necessary to have an instrument that can defend the integrity of the Single Market and allow the Commission to ensure fair conditions for all - EU and third state companies. Reciprocity does not signify closing off markets but opening up markets. Therefore restrictive measures should only be used as a last recourse;
- argued that it was essential, and a question of principle, that the Commission was enabled to set up a fair system of rules internationally. It was a delicate matter but the whole point was to stick up for the various aspects of external trade. The ALDE group would support any efforts to bring about a good system where the various views were reconciled.

Speaking on behalf of the Greens/EFA group, Mr Yannick JADOT (FR):

- stated that his group would vote against the proposal because it was a tool to open markets across the world and not to defend the European industry and economy or social and environmental standards;
- argued that the EU was unique from a global perspective in making restrictions in market access an exception, whereas as others use public procurements as a tool for economic policies for the benefit of industry and small and medium sized enterprises. By having a threshold set at 5 million Euro, EU wasn't even defending its SMEs.

Speaking on behalf of the ECR group, Ms Emma McCLARKIN (UK):

- expressed her complete rejection of the Commission proposal. She and a number of colleagues had therefore proposed an amendment suggesting to do exactly that;

- acknowledged the openness of the rapporteur but considered the legislation dangerous and a protectionist trade measure. It was built on the assumption that the EU offers unrestricted access while it struggles for reciprocal access to third country markets. This was at best an exaggerated picture with evidence showing that the Chinese and US markets are now more open than e.g. the German and French markets. In reality the proposal was an attempt from the Commission to get control over the public procurement policy of Member States;
- believed that there would be a risk of trade retaliation from third countries with damaging effects on EU's trade relations for years to come and the proposal would pose a threat to the single market and entail increased public procurement costs to the taxpayers.

Speaking on behalf of the EUL/NGL group, Mr Helmut SCHOLZ (DE):

- stated that the rapporteur had had a thankless task to improve a text that nobody needs (two thirds of contracting authorities consulted preferred the status quo). The proposal would make life harder for local authorities;
- claimed that the proposal in reality was an instrument for the Commission to make threats to China or other BRIC countries. Meanwhile, the wrong policy of austerity limited the markets for public contracts in a number of Member States, pushing some enterprises to search for contracts abroad. In that situation, the proposal would provoke partner countries to react with similar measures and to restrict access to their markets from the EU;
- concluded that his group together with many colleagues from other groups therefore requested that this example of unnecessary and not wanted legislation be withdrawn.

Speaking on behalf of the EFD group, Mr Claudio MORGANTI (IT):

- expressed his surprise that for once the EU is trying to defend its own interests as it usually in trade agreement is more concerned about others. Reciprocity is essential in trade relations and the data clearly showed that there was an imbalance in this area between the EU and its main competitors who defend their companies by using internal tenders;
- stated that the choice was between working for our businesses or for the opening of markets. He would go for the first as the opening of markets only benefitted bigger northern European companies.

Amongst other speakers, the following can be mentioned:

Mr Vital MOREIRA (S&D, PT):

- supported the rapporteur's proposals as a balanced compromise. Access for EU companies to third country markets was vital, in particular in a time of economic crisis. International companies can access our markets while our companies struggle on third country markets.
- underlined that the measures were not restrictive. The aim was not to close EU markets but to open other markets on a reciprocal basis. Creating growth and jobs within Europe should not be sacrificed to national interest that are looking to benefit from lower bids from countries that do not offer similar reciprocal arrangements to our companies, be it China, Brazil or India.
- Welcomed that the Parliament reports on public procurement stated that international environmental and labour standards and also social standards must be complied with at both European and international level when rewarding public procurement contracts.

Ms Ria OOMEN-RUIJTEN (EPP, NL):

- stated that while we in the EU wanted open public procurement markets, there was a lack of reciprocity in some third countries whose markets were closed off. In finding a solution to this real problem, the Commission had been creative but she still had some doubts;
- questioned whether basing the exclusion of suppliers on the origin of goods would not lead to disadvantages for EU companies given that they are often linked to companies outside the EU. Therefore the amendments proposed might not work;
- expressed doubts about the administrative burdens the proposal could result and on whether the proposal could lead to protectionism. As concerns Article 6, she questioned whether allowing decentralised authorities to tell the Commission that some suppliers should be excluded, would be tantamount to decentralising foreign policy.

Ms Laima Liucija ANDRIKIENĖ (EPP, LT):

- welcomed the EU's on-going efforts to open up third country public procurement markets for EU companies given the mismatch between the openness of the EU market and the restrictive practices by major trading partners;
- supported the aims of the Commission's proposal in creating a new instrument. Nevertheless, she found that the amendments proposed by the rapporteur and voted by the Committee had improved the text and constituted a real alternative to the original proposal. She would vote for the amendments and suggested colleagues to do the same.

### III. VOTE

The vote took place on 15 January 2014. The European Parliament adopted 91 amendments to the proposal.

All but two of the Committee's amendments (amendments 32 and 54) were adopted. In addition, 7 other amendments were adopted (amendments 86 - 91 by the EPP, S&D and ALDE groups and amendment 93 by the EPP group).

The amendments adopted are set out in the Annex.

The vote on the legislative resolution was postponed to a later session, thereby not closing the European Parliament's first reading and leaving open the possibility of reaching an agreement in first reading. The matter was then referred back to the Committee on International Trade, pursuant to Rule 57(2) of the European Parliament's Rules of Procedure.



## Access of goods and services to public procurement markets \*\*\*I

Amendments adopted by the European Parliament on 15 January 2014 on the proposal for a regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries (COM(2012)0124 – C7-0084/2012 – 2012/0060(COD))<sup>1</sup>

(Ordinary legislative procedure: first reading)

### Amendment 1

#### Proposal for a regulation Title 1

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

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

(Text with EEA relevance)

##### *Amendment*

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

(Text with EEA relevance)

### Amendment 2

#### Proposal for a regulation Citation 3 a (new)

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

##### *Amendment*

***Having regard to the revised public  
procurement directives (2011/0438(COD),  
2011/0439(COD) and 2011/0437(COD));***

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

### Amendment 3

#### Proposal for a regulation

##### Citation 3 b (new)

*Text proposed by the Commission*

*Amendment*

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

### Amendment 4

#### Proposal for a regulation

##### Recital 1

*Text proposed by the Commission*

*Amendment*

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

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

### Amendment 86

#### Proposal for a regulation

##### Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 5

### Proposal for a regulation

#### Recital 5

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 6

### Proposal for a regulation

#### Recital 5 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 7

### Proposal for a regulation

#### Recital 5 b (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 8

### Proposal for a regulation

#### Recital 6

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

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

##### *Amendment*

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

## Amendment 87

### Proposal for a regulation

#### Recital 7

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

(7) Directives 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors<sup>10</sup> and 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>11</sup> contain only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 58 and 59 of Directive 2004/17/EC. These provisions however only **have** a limited scope and due to a lack of guidance they **are** not much applied by contracting entities.

##### *Amendment*

(7) Directives 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors<sup>10</sup> and 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>11</sup> contain only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 58 and 59 of Directive 2004/17/EC. These provisions, however only **had** a limited scope and due to a lack of guidance they **were** not much applied by contracting entities, **and should therefore be replaced by more concise and applicable provisions.**

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<sup>10</sup> OJ L 134, 30.4.2004, p. 1.

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<sup>10</sup> OJ L 134, 30.4.2004, p. 1.

<sup>11</sup> OJ L 134, 30.4.2004, p. 114.

<sup>11</sup> OJ L 134, 30.4.2004, p. 114.

## Amendment 88

### Proposal for a regulation Recital 7 a (new)

*Text proposed by the Commission*

*Amendment*

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

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<sup>12</sup> ***Directive 2014/.../EU of the European Parliament and of the Council of ... on public procurement (OJ L ...).***

<sup>13</sup> ***Directive 2014/.../EU of the European Parliament and of the Council of ... on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L ...).***

<sup>14</sup> ***Directive 2014/.../EU of the European Parliament and of the Council of ... on the award of concession contracts (OJ L ...).***

## Amendment 9

### Proposal for a regulation Recital 8

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 10

### Proposal for a regulation Recital 9

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 11**

**Proposal for a regulation**

**Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

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

**Amendment 12**

**Proposal for a regulation**

**Recital 10**

*Text proposed by the Commission*

(10) The objectives of improving the access of EU economic operators to the public procurement markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the European Single Market require that the

*Amendment*

(10) The objectives of improving the access of EU economic operators to the public procurement **and concessions** markets of certain third countries protected by restrictive procurement measures and preserving equal conditions of competition within the European Single Market require

treatment of third-country goods and services not covered by the international commitments of the Union be harmonised throughout the European Union.

that the treatment of third-country goods and services not covered by the international commitments of the Union be harmonised throughout the European Union.

## Amendment 13

### Proposal for a regulation

#### Recital 11

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

(11) For this purpose rules of origin should be established so that contracting authorities/entities know whether goods and services are covered by the international commitments of the European Union. The origin of a good should be determined in accordance with Article 22 to 26 of Regulation (EC) No 2913/1992 of the European Parliament and of the Council of 12 October 1992 establishing the Community Customs Code<sup>12</sup>.

According to this Regulation goods should be considered to be Union goods when they are wholly obtained or produced in the Union. Goods whose production involved one or more third countries should be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture. The origin of a service should be determined on the basis of the origin of the natural or legal person providing it. The guidance referred to in recital 9 should cover the application in practice of the rules of origin.

##### *Amendment*

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

practice of the rules of origin.

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<sup>12</sup>OJ L 302, 19.10.1992, p. 1

## Amendments 14 and 89

### Proposal for a regulation

#### Recital 12

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

(12) The Commission should assess whether to approve that contracting authorities/entities within the meaning of Directives [2004/17/EC, 2004/18/EC and Directive [...] of the European Parliament and the Council of [...]...on the award of concession contracts<sup>13</sup>] exclude, for contracts with an estimated value equal or above EUR 5.000.000 from procedures for the award of contracts goods and services not covered by the international commitments undertaken by the European Union.

##### *Amendment*

(12) ***In the event that the Commission initiates an external procurement investigation to determine whether a lack of substantial reciprocity can be observed regarding access to the public procurement markets of third countries,*** the Commission should assess whether to approve that contracting authorities/entities within the meaning of Directives [2004/17/EC, 2004/18/EC and Directive [...] of the European Parliament and the Council of [...]...on the award of concession contracts<sup>13</sup>] exclude, for ***procedures for the award of contracts or concessions*** with an estimated value equal or above EUR 5 000 000 from procedures for the award of contracts goods and services not covered by the international commitments undertaken by the European Union. ***This does not concern procedures for the award of contract goods and services originating in the countries of the European Economic Area as defined by the relevant rules of origin, as well as contract goods and services originating in countries that benefit from the "Everything But Arms" arrangement as listed in Annex IV to Regulation (EU) No 978/2012 of the European Parliament and of the Council<sup>1</sup>, as well as contract goods and services originating in developing countries considered to be vulnerable due to a lack of diversification and insufficient integration within the international trading system as defined in Annex VII to Regulation (EU) No 978/2012.***



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<sup>13</sup> OJ L....

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<sup>13</sup> OJ L....

<sup>13a</sup> **Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).**

## Amendments 15 and 90

### Proposal for a regulation Recital 13

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 16

### Proposal for a regulation Recital 15

#### *Text proposed by the Commission*

(15) For contracts with an estimated value

#### *Amendment*

(15) For contracts ***and concessions*** with an

equal or above EUR 5.000.000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the goods and/or services originate contains, for the goods and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of substantial reciprocity should be presumed where restrictive procurement measures result in serious and recurring discriminations of EU economic operators, goods and services.

estimated value equal or above EUR 5 000 000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement **and concessions** between the Union and the country where the goods and/or services originate contains, for the goods and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures **in the field of procurement or the award of concessions** leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of substantial reciprocity should be presumed where restrictive procurement measures **in the field of procurement or the award of concessions** result in serious and recurring discriminations of EU economic operators, goods and services **or if the non-observance of international labour law provisions listed in Annex XI to the Directive on public procurement [...] 2014 and in Annex XIV to the Directive on procurement by entities operating in the water, energy, transport and postal services sectors [...] (2014) by public authorities have led to serious difficulties encountered by European undertakings and reported to the Commission, when those European undertakings have tried to secure the award of contracts and concessions in third countries.**

## Amendment 17

### Proposal for a regulation Recital 16

#### *Text proposed by the Commission*

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine to what

#### *Amendment*

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine to what

degree public procurement laws of the country concerned ensure transparency in line with international standards in the field of public procurement and preclude any discrimination against Union goods, services and economic operators. In addition, it should examine to what degree public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic *operators*.

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

## Amendment 18

### Proposal for a regulation Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 19

### Proposal for a regulation Recital 17

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 20**

**Proposal for a regulation**

**Recital 18**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 21**

**Proposal for a regulation**

**Recital 19**

*Text proposed by the Commission*

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

*Amendment*

(19) In view of the greater difficulty for contracting authorities/entities to assess, in the context of tenders comprising goods and/or services originating outside the European Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of these goods or services, the explanations of tenderers it is appropriate to provide for an increased transparency in the treatment of abnormally low tenders. ***Tenders that appear abnormally low in relation to the works, supplies or services might be based on technically, economically or legally unsound assumptions or practices.*** In addition to the rules provided by Article 69 of Directive ***2014/XXX/EU of the European Parliament and of the Council<sup>13a</sup>*** and Article 79 of Directive ***2014/XXX/EU of the European Parliament and of the Council<sup>13b</sup>*** the contracting authority/entity that intends to accept such an abnormally low tender, should inform the other tenderers of this in writing including the reasons for the abnormally low character of the price or costs charged. ***Where the tenderer cannot provide a sufficient explanation, the contracting authority should be entitled to reject the tender.*** This allows these tenderers to contribute to a more accurate assessment as to whether the successful tenderer will be able to fully perform the contract under the conditions spelled out in the tender documentation. Therefore, this additional information would achieve a more level playing field on the EU public procurement market.

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<sup>13a</sup> ***Directive 2014/XXX/EU of the European Parliament and of the Council on public procurement (OJ XXX) (2011/0438(COD)).***

<sup>13b</sup> ***Directive 2014/XXX/EU of the European Parliament and of the Council on procurement by entities operating in***

## Amendments 22 and 91

### Proposal for a regulation

#### Recital 20

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

(20) The Commission should be able, on its own initiative or at the application of interested parties or a Member State, to initiate at any time an external **procurement** investigation into restrictive procurement practices allegedly maintained by a third country. ***In particular it shall take into account the fact that the Commission has approved a number of intended exclusions concerning a third country pursuant to Article 6(2) of this Regulation.*** Such investigative procedures should be without prejudice to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization<sup>14</sup>.

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<sup>14</sup>OJ L 349, 31.12.1994

##### *Amendment*

(20) The Commission should be able, on its own initiative or at the application of interested parties or a Member State, to initiate at any time an external investigation into restrictive procurement ***and concessions*** practices allegedly maintained by a third country. ***In its decision to initiate an external investigation procedure, it should take into account the number of requests made by contracting authorities/entities or Member States.*** Such investigative procedures should be without prejudice to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization<sup>14</sup>.

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<sup>14</sup>OJ L 349, 31.12.1994

## Amendment 23

### Proposal for a regulation

#### Recital 21

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

(21) Where the Commission has, on the basis of information available to it, reason to believe that a third country has adopted or maintains a restrictive procurement practice, it should be able to start an investigation. If the existence of a restrictive procurement practice in a third

##### *Amendment*

(21) Where the Commission has, on the basis of information available to it, reason to believe that a third country has adopted or maintains a restrictive procurement ***and concession*** practice, it should be able to start an investigation. If the existence of a restrictive procurement practice in a third

country is confirmed the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for economic operators, goods and services in public procurement in that country.

country is confirmed the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for economic operators, goods and services in public procurement in that country.

## Amendment 24

### Proposal for a regulation

#### Recital 22

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

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

##### *Amendment*

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

## Amendment 25

### Proposal for a regulation

#### Recital 23

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

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

##### *Amendment*

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

which they respond.

which they respond *and should apply for a maximum period of five years, which can be extended for another five years.*

## Amendment 26

### Proposal for a regulation

#### Recital 24 a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 27

### Proposal for a regulation

#### Recital 26

*Text proposed by the Commission*

*Amendment*

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

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



## Amendment 28

### Proposal for a regulation Recital 27

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 29

### Proposal for a regulation Recital 30

#### *Text proposed by the Commission*

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

#### *Amendment*

(30) The Commission should report at least every three years on the application of this Regulation. ***In its report, the Commission should assess the functioning of this Regulation as well as the progress made in achieving reciprocity in the opening of public procurement markets. Together with the second report on the application of this Regulation, due at the latest six years following this Regulation's entry into force, the Commission should either submit a proposal to improve this***

***Regulation or set out the reasons why, in the Commission's view, no changes to this Regulation are needed. In the event that the Commission neither submits a proposal nor sets out the reasons why no changes are needed to this Regulation, this Regulation should cease to apply.***

## **Amendment 30**

### **Proposal for a regulation**

#### **Recital 31**

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

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

##### *Amendment*

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

## **Amendment 31**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1**

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

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

##### *Amendment*

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

*and services to their tendering procedures only by measures provided for in this Regulation or by relevant Union law.*

### **Amendment 93**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 2 – subparagraph 2**

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

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

##### *Amendment*

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

### **Amendment 33**

#### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point a**

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

(a) ‘**supplier**’ means any natural or legal person which offers on the market **goods**;

##### *Amendment*

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

### **Amendment 34**

#### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point b**

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

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

##### *Amendment*

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

## Amendment 35

### Proposal for a regulation

#### Article 2 – paragraph 1 – point d

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

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

##### *Amendment*

(d) ‘covered goods or services’ means a good or service originating in a country with which the Union has concluded an international agreement in the field of public procurement **and concessions** including market access commitments and in respect of which the relevant agreement applies. Annex I to this Regulation contains a list of relevant agreements;

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

## Amendment 39

### Proposal for a regulation

#### Article 2 – paragraph 1 – point g a (new)

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

##### *Amendment*

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

***A ‘lack of substantial reciprocity’ shall also be presumed, where the non-observance of international labour law provisions listed in Annex XI to the***

*Directive on public procurement [...] 2014 and in Annex XIV to the Directive on procurement by entities operating in the water, energy, transport and postal services sectors [...] (2014) by public authorities have led to difficulties encountered by European undertakings and reported to the Commission, when those European undertakings have tried to secure the award of contracts and concessions in third countries.*

#### **Amendment 36**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

#### **Amendment 37**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

#### **Amendment 38**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 2 – point e**

*Text proposed by the Commission*

*Amendment*

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

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

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

## **Amendment 40**

### **Proposal for a regulation Article 3 – paragraph 1**

*Text proposed by the Commission*

1. The origin of a good shall be determined in accordance with **Article 22 to 26 of Regulation (EC) No 2913/1992** of the European Parliament and of the Council of **12 October 1992 establishing the Community Customs Code**<sup>18</sup>.

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<sup>18</sup> **OJ L 302, 19.10.1992, p. 1**

*Amendment*

1. The origin of a good shall be determined in accordance with **Article 59 to 63** of Regulation (EU) No 952/2013 of the European Parliament and of the Council, **including the additional provisions to be adopted under Article 65 thereof.**

## **Amendment 41**

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

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 42**

### **Proposal for a regulation Article 4**

*Text proposed by the Commission*

Treatment of covered goods and services  
When awarding contracts for the execution of works and/or a work, the supply of

*Amendment*

Treatment of covered goods and services  
When awarding contracts for the execution of works and/or a work, the supply of

goods or the provision of services, contracting authorities/entities shall treat covered goods and services equally to goods and services originating in the **European** Union.

Goods or services originating in least-developed countries listed in Annex **I** to Regulation (EC) No 732/2008 shall be treated as covered goods and services.

goods or the provision of services, **or when awarding work and services concessions**, contracting authorities/entities shall treat covered goods and services equally to goods and services originating in the Union.

Goods or services originating in least-developed countries listed in Annex **IV** to Regulation (EU) No 978/2012 **of the European Parliament and of the Council or in developing countries considered to be vulnerable due to a lack of diversification and insufficient integration within the international trading system and in the world economy as defined in Annex VII to Regulation (EU) No 978/2012** shall be treated as covered goods and services.

#### Amendment 43

##### Proposal for a regulation Article 6 – paragraph 1

*Text proposed by the Commission*

1. Upon request of contracting authorities/entities **the Commission shall assess** whether to approve, for contracts with an estimated value equal or above EUR 5.000.000 exclusive of value-added tax (VAT) the exclusion from procedures for the award of contracts tenders comprising goods or services originating outside the Union, if the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, under the following conditions.

*Amendment*

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

#### Amendment 44

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

*Text proposed by the Commission*

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

*Amendment*

Where contracting authorities/entities intend to request the exclusion from procedures for the award of contracts on the basis of paragraph 1 they shall indicate this ***clearly in the introductory part of the ‘technical specifications’ or of the ‘descriptive document’ as referred to in Article 2(15) of Directives [2014/.../EU] on public procurement and of Directive [2014/.../EU] on procurement by entities operating in the water, energy, transport and postal services sectors, or in the introductory part of the ‘technical and functional requirements’ as referred to in Article 2(13) of Directive [2014/.../EU] on the award of concession contracts.***

**Amendment 45**

**Proposal for a regulation**

**Article 6 – paragraph 2 – subparagraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 46**

**Proposal for a regulation**

**Article 6 – paragraph 2 – subparagraph 4 – point b**

*Text proposed by the Commission*

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

*Amendment*

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



## Amendment 47

### Proposal for a regulation

#### Article 6 – paragraph 2 – subparagraph 4 – point d a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 48

### Proposal for a regulation

#### Article 6 – paragraph 2 – subparagraph 5

*Text proposed by the Commission*

*Amendment*

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

*deleted*

## Amendment 49

### Proposal for a regulation

#### Article 6 – paragraph 2 – subparagraph 6

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 50

### Proposal for a regulation

#### Article 6 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. For contracts referred to in paragraph 1, the Commission shall adopt an

*3. Where the Commission finds, for the goods and/or services for which the*

implementing act concerning the approval of the intended exclusion within a period of **two months** commencing on the first **working** day following the date on which it receives the notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17 (2). This period may be extended once by a maximum of **two months** in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this **two-month** period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.

***exclusion is proposed, a lack of substantial reciprocity as defined in point (ga) of Article 2(1), it shall adopt an implementing act approving the exclusion of the tenders concerned by the investigation in accordance with the examination procedure referred to in Article 17(2). The implementing act shall be adopted within a period of one month commencing on the first calendar day after a request referred to in paragraph 1. This period may be extended once by a maximum of one month in duly justified cases, in particular if the information contained in the notification or in the documents annexed thereto is incomplete or inexact or if the facts as reported undergo any substantive changes. If, at the end of this one-month period, or the extended period the Commission has not adopted a decision approving or disapproving the exclusion, the exclusion shall be deemed to have been disapproved by the Commission.***

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

## Amendment 51

### Proposal for a regulation

#### Article 6 – paragraph 4 – subparagraph 1 – point b

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

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

##### *Amendment*

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

**Amendment 52**

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

*Text proposed by the Commission*

*Amendment*

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

*deleted*

**Amendment 53**

**Proposal for a regulation  
Article 6 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

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

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

**Amendment 92**

**Proposal for a regulation  
Article 6 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

*7. Contracting authorities/entities which have excluded tenders pursuant to*

*7. Where tenders have been excluded pursuant to paragraph 3, contracting*

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

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

## Amendment 55

### Proposal for a regulation Article 6 – paragraph 8

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 56

### Proposal for a regulation Article 7 – paragraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

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

other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

other tenderers of this in writing, including the reasons for the abnormally low character of the price or costs charged.

***Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex XI to the Directive on public procurement [...] 2013.***

## Amendment 57

### Proposal for a regulation Article 7 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 58

### Proposal for a regulation Article 8 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

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

*Amendment*

The Commission may at any time, on its own initiative or upon application of interested parties, ***contracting authority/entity*** or a Member State, may initiate an external procurement investigation into alleged restrictive

restrictive procurement measures.

procurement measures. *In its decision to initiate an external procurement investigation, the Commission shall take into account the number of requests made by contracting authorities/entities or Member States. In the event that the Commission declines to initiate an investigation, it shall duly justify its decision to the Member State, interested party or the contracting entity that submitted the application.*

#### **Amendment 59**

##### **Proposal for a regulation**

##### **Article 8 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

#### **Amendment 60**

##### **Proposal for a regulation**

##### **Article 8 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. The investigation referred to in paragraph 1 is conducted on the basis of the criteria laid down in Article 6.*

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

#### **Amendment 61**

##### **Proposal for a regulation**

##### **Article 8 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties

3. The assessment by the Commission of whether restrictive procurement measures are maintained by the third country concerned shall be made on the basis of the information supplied by interested parties

and Member States and/or facts collected by the Commission during its investigation, and shall be concluded within a period of *nine* months after the initiation of the investigation. In duly justified cases this period may be extended by *three months*.

and Member States and/or facts collected by the Commission during its investigation, *or its regular reports on existing trade barriers in third countries*, and shall be concluded within a period of *three* months after the initiation of the investigation. In duly justified cases this period may be extended by *one month*.

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

## Amendment 62

### Proposal for a regulation

#### Article 9 – paragraph 3 – subparagraph 1

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

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

##### *Amendment*

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

## Amendment 63

### Proposal for a regulation

#### Article 9 – paragraph 3 – subparagraph 3 – introductory part

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

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

##### *Amendment*

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

## Amendment 64

### Proposal for a regulation

#### Article 9 – paragraph 3 – subparagraph 3 – point i

*Text proposed by the Commission*

*Amendment*

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

## Amendment 65

### Proposal for a regulation

#### Article 9 – paragraph 3 – subparagraph 3 – point ii

*Text proposed by the Commission*

*Amendment*

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

## Amendment 66

### Proposal for a regulation

#### Article 9 – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

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



## Amendment 67

### Proposal for a regulation

#### Article 9 – paragraph 5 – subparagraph 1 – introductory part

*Text proposed by the Commission*

The Commission may terminate the consultation if the country concerned ***undertakes international commitments agreed*** with the Union ***in any of*** the following ***frameworks***:

*Amendment*

The Commission may terminate the consultation if the country concerned ***has undertaken*** with the Union ***or at international level*** the following ***measures***:

## Amendment 68

### Proposal for a regulation

#### Article 9 – paragraph 5 – subparagraph 1 – point a (new)

*Text proposed by the Commission*

*Amendment*

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

## Amendment 69

### Proposal for a regulation

#### Article 9 – paragraph 5 – subparagraph 1 – point a iii

*Text proposed by the Commission*

*Amendment*

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

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

## Amendment 70

### Proposal for a regulation

#### Article 9 – paragraph 5 – subparagraph 1 – point b (new)

*Text proposed by the Commission*

*Amendment*

***(b) corrective measures have been adopted***

*by the country concerned.*

## Amendment 71

### Proposal for a regulation

#### Article 9 – paragraph 6

*Text proposed by the Commission*

6. In the event that a consultation with a third country does not lead to satisfactory results within **15** months from the day the consultation with the third country started, the Commission shall terminate the consultation and consider acting under Article 10 to adopt implementing acts to limit the access of goods and services originating in a third country.

*Amendment*

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

## Amendment 72

### Proposal for a regulation

#### Article 10 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 73

### Proposal for a regulation

#### Article 10 – paragraph 3 – introductory part

*Text proposed by the Commission*

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

*Amendment*

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

#### **Amendment 74**

##### **Proposal for a regulation**

##### **Article 11 – paragraph 1 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

#### **Amendment 75**

##### **Proposal for a regulation**

##### **Article 13 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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

#### **Amendment 76**

##### **Proposal for a regulation**

##### **Article 13 – paragraph 1 – subparagraph 2 (new)**

*Text proposed by the Commission*

*Amendment*

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

*period of five calendar days.*

## **Amendment 77**

### **Proposal for a regulation**

#### **Article 13 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

Where a contracting authority/entity intends not to apply measures adopted pursuant to Article 10 of this Regulation, or reinstated pursuant to Article 11, it shall indicate its intention in the contract notice that it shall publish pursuant to Article 35 of Directive 2004/18/EC or Article 42 of Directive 2004/17/EC.

## **Amendment 78**

### **Proposal for a regulation**

#### **Article 13 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 79**

### **Proposal for a regulation**

#### **Article 13 – paragraph 2 – subparagraph 3**

*Text proposed by the Commission*

***The notification shall contain the following information:***

- (a) the name and contact details of the contracting authority/entity;***
- (b) a description of the object of the***

*Amendment*

***deleted***

*contract;*

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

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

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

## **Amendment 80**

### **Proposal for a regulation Article 15 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

## **Amendment 81**

### **Proposal for a regulation Article 16 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 16a**

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

***In connection with public procurements funded by the European Union and its Member States, the Commission shall ensure that a binding regulatory***

*framework intended to govern the award and performance of public contracts is introduced. In that connection, the Union shall adopt uniform rules to ensure fair conditions of competition between Union and third country economic operators.*

## **Amendment 82**

### **Proposal for a regulation Article 18 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*2. Neither the Commission nor the Council, nor the European Parliament nor Member States, nor their officials shall reveal any information of a confidential nature received pursuant to this Regulation, without specific permission from the supplier of such information.*

*deleted*

## **Amendment 83**

### **Proposal for a regulation Article 18 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 84**

### **Proposal for a regulation Article 19**

*Text proposed by the Commission*

*Amendment*

*By 1 January 2017 and at least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this*

*At least every three years after the entry into force of this Regulation, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on*

Regulation and on progress made in international negotiations regarding access for EU economic operators to public contract award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

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

## Amendment 85

### Proposal for a regulation Article 20

#### *Text proposed by the Commission*

Articles 58 and 59 of Directive 2004/17/EC shall be ***repealed*** with effect from the entry into force of this Regulation.

#### *Amendment*

***The Commission shall assess whether*** Articles 58 and 59 of Directive 2004/17/EC ***are to be maintained. In view of the conclusions of that assessment, the Commission shall submit a legislative proposal repealing those Articles*** with effect from the entry into force of this Regulation.