

**Opinion of the Committee of the Regions on 'Public procurement package'**

(2012/C 391/09)

## THE COMMITTEE OF THE REGIONS

- takes the view that the regulatory framework for public procurement should pay greater attention to value for money in procurement. The primary aim for a contracting authority running a procurement procedure is to purchase certain supplies, services or works, and the rules should ensure that the procedure does in fact result in a transaction that is satisfactory to the buyer, the vendor and the public. Simple and intelligible rules will of course also facilitate cross-border trade more than anything else;
- finds it regrettable that some new proposals are also difficult to understand and extraordinarily detailed, as well as adding a number of new provisions. Certain provisions to facilitate procurement have also been added, but other new additions add to the administrative burden on contracting authorities despite the fact that legal stability is required in order for public procurement to be carried out smoothly;
- believes that it is certainly possible to develop simpler – but no less effective – rules for procurement, as demonstrated, not least, by the fact that the WTO's Government Procurement Agreement (GPA) is much simpler than the equivalent EU rules. The Commission is asked to significantly increase the thresholds for procurement. Given that a minuscule percentage of public procurement is cross-border, and in view of the administrative burden the regulatory framework creates for authorities and suppliers, the thresholds do not need to be as low as they are;
- points out that the proposal contravenes the Member States' right to organise their own administration and is in breach of the subsidiarity principle. It is important for the subsidiarity and proportionality principles to be respected. A proposed EU measure must be both necessary to achieve the objectives and more effective than measures taken at national level.

<b>Rapporteur</b>	Catarina SEGERSTEN LARSSON (SE/EPP), Member of the Assembly of Värmland County Council
<b>Reference documents</b>	Opinion on the public procurement package, comprising: <ul style="list-style-type: none"> <li>— Proposal for a Directive of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors  COM(2011) 895 final</li> <li>— Proposal for a Directive of the European Parliament and of the Council on public procurement  COM(2011) 896 final</li> </ul>

## I. BACKGROUND

### THE COMMITTEE OF THE REGIONS

1. notes that the European Commission's Green Paper on *The modernisation of EU public procurement policy – Towards a more efficient European Procurement Market* (COM(2011) 15 final) addressed a great many issues surrounding public procurement;

2. published an opinion on the Green Paper in May 2011, stressing among other things that it was important for SMEs to be able to take part in public procurement procedures, that the current rules were too detailed and that there should be opportunities to take account of the environment, set social requirements and use public procurement to promote innovation. The Committee also wanted to retain the classification of A and B services, introduce a European procurement passport, extend the scope for the negotiated procedure and improve the provisions for framework agreements;

## II. THE EUROPEAN COMMISSION'S PROPOSED AMENDMENTS TO THE DIRECTIVE ON PUBLIC PROCUREMENT AND THE DIRECTIVE ON PROCUREMENT BY ENTITIES OPERATING IN THE WATER, ENERGY, TRANSPORT AND POSTAL SERVICES SECTORS

3. notes that the proposals for new procurement directives include a great many new and detailed provisions compared with the current directives. Some of the proposals seek to make matters easier for small and medium-sized enterprises, and certain forms of cooperation between contracting authorities are excluded. There is greater emphasis on environmental and social aspects, innovation and electronic procurement. Another new element is the proposal to abolish the distinction between A and B services and introduce a new system for procurement of social services; rules are also proposed for oversight of public procurement and for advisory activities;

4. highlighted the need for a much simpler regulatory framework when the current procurement directives were being drafted. The current system generates numerous

problems and legal proceedings, due to the complexity and obscurity of the regulatory framework. This can also be seen as a sign that contracting authorities are not trusted; moreover, regrets that the focus is on the public procurement procedure not the outcome in terms of general interest;

5. takes the view that the regulatory framework for public procurement should pay greater attention to value for money in procurement. The primary aim for a contracting authority running a procurement procedure is to purchase certain supplies, services or works, and the rules should ensure that the procedure does in fact result in a transaction that is satisfactory to the buyer, the vendor and the public. Simple and intelligible rules will of course also facilitate cross-border trade more than anything else;

6. finds it regrettable that some new proposals are also difficult to understand and extraordinarily detailed, as well as adding a number of new provisions. Certain provisions to facilitate procurement have also been added, but other new additions add to the administrative burden on contracting authorities despite the fact that legal stability is required in order for public procurement to be carried out smoothly;

7. points out that, under Article 5(4) of the EU Treaty, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The proposed level of detail runs counter to the aim of simplifying procurement rules, and will entail an unacceptable administrative burden for contracting authorities, particularly for small authorities at local and regional level;

8. suggests that one way of making the regulatory framework more manageable would have been to have fewer, simpler rules and complement them, if appropriate, with guidelines based on ECJ case law. These could be continually updated with no need to amend the directives;

9. believes that it is certainly possible to develop simpler – but no less effective – rules for procurement, as demonstrated, not least, by the fact that the WTO's Government Procurement Agreement (GPA) is much simpler than the equivalent EU rules.

The Commission is asked to significantly increase the thresholds for procurement. Given that a minuscule percentage of public procurement is cross-border, and in view of the administrative burden the regulatory framework creates for authorities and suppliers, the thresholds do not need to be as low as they are.

The recently concluded WTO Government Procurement Agreement (GPA) replaces the 1994 agreement. The Committee of the Regions would, even at this stage, ask the Commission to revisit the December 2011 agreement and to renegotiate a significant increase in the thresholds;

10. feels that it is vital to develop rules that make it easier for small and medium-sized enterprises to take part in public procurement procedures, highlighting the possibilities for subcontracting. A simple regulatory framework would be useful in this context, too, as such enterprises do not have access to experts in procurement law and other fields. Businesses are experts in their own goods or services, not in procurement rules. A number of rules have been proposed that make matters easier for these businesses, for example with regard to the submission of documents and introduction of the European Procurement Passport. This is to be welcomed. The Committee of the Regions does not, however, believe that it should be obligatory to divide contracts into lots or to provide reasons for not doing so;

11. takes note of the proposal that contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should be exempted from the application of the rules if the conditions set out in the directive are fulfilled. The proposed rules regarding exemptions for intra-group cooperation and for cooperation between contracting authorities, however, are framed far too narrowly, will not be workable in practice, and thus allow the Directive to interfere with the internal administrative arrangements of the Member States;

12. suggested, in its opinion on the Green Paper, that the negotiated procedure should be subject to the same conditions as apply in the utilities sector. It stands by this position, as there is no reason to assume that authorities within the "conventional" sector are less suited to negotiation than entities in the utilities sector. Contracting authorities procure not only standard goods but also many complex products such as IT systems and medical devices. The negotiated procedure is appropriate for these procurement procedures, as well as for a several types of complex service;

13. believes that small and medium-sized enterprises would benefit from an expansion in the use of the negotiated procedure, as it would make the process more flexible. Moreover, it is common for these enterprises to have problems with regard to additions and adjustments to tenders; the rules surrounding this could be rather less rigid;

14. feels that the procurement of information and communications technology (ICT) systems is particularly problematic, as

additional works such as extra licences and new modules cannot always be tendered for without serious inconvenience, both technical and cost-related;

15. points out that a somewhat simpler system involving prior information notices for competitive procurement, in line with WTO rules, is proposed for contracting authorities at local and regional level. This option means that there is no need to publish a separate contract notice before launching the procurement procedure; it is a good proposal that could simplify matters for both authorities and business;

16. stated, in its response to the Green Paper, that framework agreements should be regulated in line with the rules in the Utilities Directive, as a basis for developing more flexible rules. Unfortunately, the Commission is instead proposing to change the provisions of the Utilities Directive to match the detailed rules in the conventional sector. It should also be made explicit that, when it comes to goods and services to meet individual needs – such as aids for people with disabilities – contracts can be designed to allow individual citizens to choose from the suppliers included in the framework agreement;

17. sees electronic procurement as a positive move, and welcomes the Commission's initiatives in this regard. Electronic procurement is easier for both purchasers and vendors, but the proposed two-year period before it becomes mandatory to submit and accept electronic tenders is much too short, particularly for small enterprises. This period should be fixed by the contracting authorities, as there are significant differences in development between sectors and Member States in this regard and it is the contracting authorities that are best placed to judge the situation. It seems illogical to have specific rules and a shorter timescale for the introduction of e-procurement for central purchasing bodies, especially those at local and regional level;

18. would also stress that it is absolutely vital for the Commission to review the CPV nomenclature, as it is ambiguous, difficult to navigate and, in some places, illogical. A properly functioning CPV system would facilitate electronic procurement;

19. insists that the current distinction between A and B services must be retained, and the proposed Articles 74-76 on social and other services should be deleted. These services have very little cross-border interest. The proposed model for social services does not make up for the disadvantages of scrapping the separate system for B services. The exemption should not apply only to social and health services: for example, legal services also involve a significant element of personal trust and do not lend themselves well to standard forms of tendering. Catering services and vocational training services, too, are often closely linked with social services, as are cleaning and similar services provided for elderly and disabled people;

20. believes that contracting authorities can make an important contribution to the achievement of the Europe 2020 strategy goals by making use of their purchasing power especially in terms of flagship initiatives which concern Innovation Union and Resource Efficient Europe;

21. welcomes the fact that the proposed directive places greater weight on the possibility to consider environmental and social requirements, even though it seems likely that the rules will not be particularly easy to apply (see, for example, Article 67 on life-cycle costing). It is important that the contracting authorities should be free to determine which, if any, requirements to impose, because of the wide differences in the nature of goods and services, and the need to allow policy goals to be defined by political choices at the local and regional level. There is a big difference between the procurement of cement and of MRI equipment, for instance. The CoR points out, however, that in all cases there must be a substantive link to the object of the contract in order to prevent non-transparent and arbitrary contract award decisions and to ensure fair competition between businesses;

22. feels that it must be possible both to make procurement decisions based on the lowest price or the most economically advantageous tender, at the choice of the contracting authority. For a large number of standard products such as petrol, price is the only relevant criterion; the same is true for many complex products such as certain medicines whose quality has already been tested for their official marketing authorisation. Basing procurement on the lowest price certainly does not imply that no quality requirements are set: in such procedures, the quality requirements are made obligatory, and then the tender that meets those requirements for the lowest price is accepted. Lowest-price procedures also benefit small businesses because they often have low administrative costs and can offer competitive prices. Conversely, competing on social and environmental characteristics may freeze out many small businesses from the market. The proposal's use of the phrase "lowest cost" instead of "lowest price" is confusing: The term "lowest cost" is more connected with the most economically advantageous

tender, and indicates that factors other than price will be taken into consideration. For the sake of clarity, the wording in the current directive should be retained;

23. notes that the Commission has also put forward new provisions regarding relationships with subcontractors and the modification of contracts during their term. In the Committee of the Regions' view, these elements should continue not to be covered by the directive, as they are primarily issues for national contract law. It may, however, be useful to cover these issues in interpretative communications;

24. notes that the Commission has proposed a number of far-reaching provisions concerning national oversight bodies and procurement assistance. It should be noted that these matters were not discussed in the Green Paper. Under Article 2 of Protocol No 2 on the application of the principles of subsidiarity and proportionality, the Commission must consult widely before proposing legislative acts. These consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged, except in cases of exceptional urgency. The creation of national oversight authorities is no doubt very important to local and regional government levels, particularly in Member States where subnational authorities have legislative powers;

25. points out that the proposal contravenes the Member States' right to organise their own administration and is in breach of the subsidiarity principle. It is important for the subsidiarity and proportionality principles to be respected. A proposed EU measure must be both necessary to achieve the objectives and more effective than measures taken at national level. In this case, there is nothing to suggest that the proposed system would be more effective than allowing each Member State to arrange matters in line with their national systems. Existing governmental and judicial structures should be able to take on the new enforcement roles without the requirement to set up separate new oversight bodies in each Member State. Moreover, the Commission's proposed model appears to combine different tasks in a way that is contrary to the traditional separation between public authorities and the courts.

### III. RECOMMENDATIONS FOR AMENDMENTS

#### Amendment 1

COM(2011) 896 final

Recital 14

Text proposed by the Commission	CoR amendment
(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application	(14) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by public procurement rules. The relevant case-law of the Court of Justice of the European Union is interpreted divergently between Member States and even between contracting authorities. It is therefore necessary to clarify in what cases contracts concluded between contracting authorities are not subject to the application

Text proposed by the Commission	CoR amendment
<p>of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.</p>	<p>of public procurement rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of procurement rules. However, the application of public procurement rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. <u>Public authorities may use their own resources to carry out their tasks. They may also perform such tasks in cooperation with other public authorities or associations of authorities. EU law does not require authorities to use a particular form of cooperation for carrying out their tasks.</u> Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this directive are fulfilled. This directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.</p>

### Reason

It must be made clear that the various forms of cooperation between public authorities are beyond the scope of the procurement rules.

### Amendment 2

COM(2011) 896 final

Recital 46

Text proposed by the Commission	CoR amendment
<p>(46) Contracting authorities can be faced with external circumstances that they could not foresee when they awarded the contract. In this case, a certain degree of flexibility is needed to adapt the contract to these circumstances without a new procurement procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting authority, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.</p>	<p>(46) Contracting authorities can be faced with external circumstances that they could not foresee when they awarded the contract. In this case, a certain degree of flexibility is needed to adapt the contract to these circumstances without a new procurement procedure. The notion of unforeseeable circumstances refers to circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting authority, <del>taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value.</del> However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.</p>

### Reason

The evaluation of unforeseeable circumstances referred to in the recitals cannot take into account the resources available to contracting authorities and their relationship to the total foreseeable value of a project. The resources available to contracting authorities and evaluation of those resources do not fall

within the Commission’s remit, and the assessment of the final outcome of the procurement procedure should not take account of factors relating to the contracting authority’s organisation or staff. Contracting authorities at local level can determine their own human resources and working methods regardless of how they should award contracts for public services. The evaluation mechanism in question should be removed from the recitals as it is against EU law.

**Amendment 3**

COM(2011) 895 final

Article 1

COM(2011) 896 final

Article 1

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><i>Article 1</i></p> <p style="text-align: center;"><b>Subject-matter and scope</b></p> <p>1. This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.</p> <p>2. Procurement within the meaning of this Directive is the purchase or other forms of acquisition of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose.</p> <p>An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.</p>	<p style="text-align: center;"><i>Article 1</i></p> <p style="text-align: center;"><b>Subject-matter and scope</b></p> <p>1. This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.</p> <p>2. Procurement within the meaning of this Directive is the purchase or other forms of acquisition of works, supplies or services <u>for financial remuneration</u> by one or more contracting authorities from economic operators chosen by those contracting authorities, <del>whether or not the works, supplies or services are intended for a public purpose.</del></p> <p><del>An entirety of works, supplies and/or services, even if purchased through different contracts, constitutes a single procurement within the meaning of this Directive, if the contracts are part of one single project.</del></p> <p><u>3. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:</u></p> <ul style="list-style-type: none"> <li>(a) <u>the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;</u></li> <li>(b) <u>the essential part of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;</u></li> <li>(c) <u>there is no private participation in the controlled legal person.</u></li> </ul> <p><u>4. Paragraph 3 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity or entities, or to another legal person</u></p>

Text proposed by the Commission	CoR amendment
	<p><u>controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.</u></p> <p><u>5. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 3, may nevertheless award a contract outside the scope of this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:</u></p> <p><u>(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;</u></p> <p><u>(b) the essential part of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;</u></p> <p><u>(c) there is no private participation in the controlled legal person.</u></p> <p><u>6. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(7) of this Directive where the following cumulative conditions are fulfilled:</u></p> <p><u>(a) the purpose of the cooperation is to provide a services of public interest for which the contracting authorities are responsible, or assistance necessary for the provision of such a service;</u></p> <p><u>(b) there is no private participation in the contracting authorities.</u></p> <p><u>7. Transferring tasks and responsibilities from one public authority to another by means of an organisational measure is not the subject of this directive.</u></p>

### Reason

The acquisition of works, supplies and services that will not be used in the public interest should not be covered by the procurement directives.

A procurement should be based on an individual contract, not a project, as a project may also contain elements that fall outside the scope of the directive.

The rules on links between public authorities should be moved from Article 11 (in COM(2011) 896) and Article 21 (in COM(2011)895) to Article 1, as they fall outside the scope of the directive.

ECJ case law (Teckal C-107/98) refers to the essential part of the activities, not to 90 %, and a narrower interpretation of ECJ case law should be avoided.

Article 11 (in COM(2011)896) and Article 21 (in COM(2011) 895) should be deleted as a consequence of the proposed amendment.

**Amendment 4**

COM(2011) 896 final

## Article 4

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><i>Article 4</i></p> <p style="text-align: center;"><b>Thresholds amounts</b></p> <p>This Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:</p> <p>(a) EUR 5 000 000 for public works contracts;</p> <p>(b) EUR 130 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;</p> <p>(c) EUR 200 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.</p> <p>(d) EUR 500 000 for public contracts for social and other specific services listed in Annex XVI.</p>	<p style="text-align: center;"><i>Article 4</i></p> <p style="text-align: center;"><b>Thresholds amounts</b></p> <p>This Directive shall apply to procurements with a value exclusive of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:</p> <p>(a) EUR 5 000 000 for public works contracts;</p> <p>(b) EUR 130 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;</p> <p>(c) EUR <del>200 000</del> <u>1000000</u> for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities.</p> <p><del>(d) EUR 500 000 for public contracts for social and other specific services listed in Annex XVI.</del></p>

**Reason**

Cross-border trade is virtually non-existent, given the current threshold of around DKK 1.5 million for goods and services. Of the contacts concluded in 2009, just 1.4 % involved cross-border operations. The threshold for goods and services should be increased, while point (d) of Article 4 should be deleted. The next time the WTO agreement is renegotiated, the Commission should, at the least, give priority to increasing the threshold for procurement in real terms. Given that a minuscule percentage of public procurement is cross-border, and in view of the administrative burden the regulatory framework creates for authorities and suppliers, the thresholds do not need to be as low as they are.

**Amendment 5**

COM(2011) 895 final

## Article 19

COM(2011) 896 final

## Article 10

**Specific exclusions for service contracts**

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><b>Specific exclusions for service contracts</b></p> <p>...</p> <p>(c) arbitration and conciliation services;</p>	<p style="text-align: center;"><b>Specific exclusions for service contracts</b></p> <p>...</p> <p>(c) arbitration and conciliation services;</p>



Text proposed by the Commission	CoR amendment
<p>(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council, central bank services and operations conducted with the European Financial Stability Facility;</p> <p>(e) employment contracts;</p>	<p>(c) <u>1. any of the following legal services:</u></p> <p>(i) <u>the legal representation of a client in proceedings before a court, tribunal or authority by a lawyer as defined in Article 1 of Directive 77/249/EEC;</u></p> <p>(ii) <u>the certification of documents drawn up by a notary;</u></p> <p>(iii) <u>legal services by a trustee or guardian, or other legal services provided by a party appointed by a court or tribunal in the Member States concerned;</u></p> <p>(iv) <u>other legal services connected, even temporarily, with the exercise of official authority in the Member States concerned;</u></p> <p>(c) <u>2. national security and emergency services;</u></p> <p>(d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council, <u>and transactions to raise money or capital for contracting authorities</u>, central bank services and operations conducted with the European Financial Stability Facility;</p> <p>(e) employment contracts;</p> <p>[...]</p> <p>(g) <u>this Directive shall not apply to public service contracts awarded by a contracting authority to another contracting authority or to an association of contracting authorities on the basis of an exclusive right which they enjoy pursuant to a published law, regulation or administrative provision which is compatible with the Treaty.</u></p>

### Reason

- (c.1) Services relating to legal representation in court and other legal services are closely linked to the relevant national legal system, which generally rules out cross-border provision. Moreover, such services require a particular level of trust, which cannot be objectively defined in a procurement procedure.
- (c.2) Criteria such as economic viability should have no bearing when it comes to national security, including emergency services.
- (d) The exemption for exclusive rights currently provided in Article 18 of Directive 2004/18/EC and Articles 24 and 25 of Directive 2004/17/EC should be retained, as should the exemption for transactions to raise money or capital for the contracting authorities currently provided in Article 16(d). These provisions are needed in the Member States.
- (g) The European Treaties explicitly give Member States the right to transfer exclusive rights. This should be reflected in the procurement rules.

**Amendment 6**

COM(2011) 896 final

Article 15

Text proposed by the Commission	CoR amendment
	<p style="text-align: center;"><i>Article 15</i></p> <p>In the event that a transfer of tasks and responsibilities is not subject to public procurement law, the participation of private actors is not ruled out (provided it is permissible under national law), especially in the case of institutionalised cooperation. Where private participation does occur, a transfer of tasks by means of an organisational act does not constitute an act of procurement as long as it does not involve a public contract with the private actor falling within the scope of public procurement law.</p>

**Reason**

The proposed new text is intended to clarify the scope for transfers of tasks and responsibilities which are not subject to public procurement law.

**Amendment 7**

COM(2011) 895 final

Article 21

COM(2011) 896 final

Article 11

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><b>Relations between public authorities</b></p> <p>1. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:</p> <p>(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.</p> <p>(b) at least 90 % of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;</p> <p>(c) there is no private participation in the controlled legal person.</p> <p>A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.</p> <p>2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.</p>	<p style="text-align: center;"><del><b>Relations between public authorities</b></del></p> <p><del>1. A contract awarded by a contracting authority to another legal person shall fall outside the scope of this Directive where the following cumulative conditions are fulfilled:</del></p> <p><del>(a) the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments.</del></p> <p><del>(b) at least 90 % of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by that contracting authority;</del></p> <p><del>(c) there is no private participation in the controlled legal person.</del></p> <p><del>A contracting authority shall be deemed to exercise over a legal person a control similar to that which it exercises over its own departments within the meaning of point (a) of the first subparagraph where it exercises a decisive influence over both strategic objectives and significant decisions of the controlled legal person.</del></p> <p><del>2. Paragraph 1 also applies where a controlled entity which is a contracting authority awards a contract to its controlling entity, or to another legal person controlled by the same contracting authority, provided that there is no private participation in the legal person being awarded the public contract.</del></p>

Text proposed by the Commission	CoR amendment
<p>3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a public contract without applying this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:</p>	<p><del>3. A contracting authority, which does not exercise over a legal person control within the meaning of paragraph 1, may nevertheless award a public contract without applying this Directive to a legal person which it controls jointly with other contracting authorities, where the following conditions are fulfilled:</del></p>
<p>(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;</p>	<p><del>(a) the contracting authorities exercise jointly over the legal person a control which is similar to that which they exercise over their own departments;</del></p>
<p>(b) at least 90 % of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;</p>	<p><del>(b) at least 90 % of the activities of that legal person are carried out for the controlling contracting authorities or other legal persons controlled by the same contracting authorities;</del></p>
<p>(c) there is no private participation in the controlled legal person.</p>	<p><del>(c) there is no private participation in the controlled legal person.</del></p>
<p>For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:</p>	<p><del>For the purposes of point (a), contracting authorities shall be deemed to jointly control a legal person where the following cumulative conditions are fulfilled:</del></p>
<p>(a) the decision-making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;</p>	<p><del>(a) the decision making bodies of the controlled legal person are composed of representatives of all participating contracting authorities;</del></p>
<p>(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;</p>	<p><del>(b) those contracting authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the controlled legal person;</del></p>
<p>(c) the controlled legal person does not pursue any interests which are distinct from that of the public authorities affiliated to it;</p>	<p><del>(c) the controlled legal person does not pursue any interests which are distinct from that of the public authorities affiliated to it;</del></p>
<p>(d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities.</p>	<p><del>(d) the controlled legal person does not draw any gains other than the reimbursement of actual costs from the public contracts with the contracting authorities.</del></p>
<p>4. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(6) of this Directive where the following cumulative conditions are fulfilled:</p>	<p><del>4. An agreement concluded between two or more contracting authorities shall not be deemed to be a public contract within the meaning of Article 2(6) of this Directive where the following cumulative conditions are fulfilled:</del></p>
<p>(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;</p>	<p><del>(a) the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;</del></p>
<p>(b) the agreement is governed only by considerations relating to the public interest;</p>	<p><del>(b) the agreement is governed only by considerations relating to the public interest;</del></p>

Text proposed by the Commission	CoR amendment
<p>(c) the participating contracting authorities do not perform on the open market more than 10 % in terms of turnover of the activities which are relevant in the context of the agreement;</p> <p>(d) the agreement does not involve financial transfers between the participating contracting authorities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies;</p> <p>(e) there is no private participation in any of the contracting authorities involved.</p> <p>5. The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.</p> <p>The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.</p>	<p><del>(c) the participating contracting authorities do not perform on the open market more than 10 % in terms of turnover of the activities which are relevant in the context of the agreement;</del></p> <p><del>(d) the agreement does not involve financial transfers between the participating contracting authorities, other than those corresponding to the reimbursement of actual costs of the works, services or supplies;</del></p> <p><del>(e) there is no private participation in any of the contracting authorities involved.</del></p> <p><del>5. The absence of private participation referred to in paragraphs 1 to 4 shall be verified at the time of the award of the contract or of the conclusion of the agreement.</del></p> <p><del>The exclusions provided for in paragraphs 1 to 4 shall cease to apply from the moment any private participation takes place, with the effect that ongoing contracts need to be opened to competition through regular procurement procedures.</del></p>

### Reason

Article 11 and Article 21, respectively, should be deleted as a consequence of amendment 3.

### Amendment 8

COM(2011) 895 final

Article 31

COM(2011) 896 final

Article 17

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><b>Reserved contracts</b></p> <p>Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.</p> <p>The call for competition shall make reference to this provision.</p>	<p style="text-align: center;"><b>Reserved contracts</b></p> <p>Member States may reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled and disadvantaged workers or provide for such contracts to be performed in the context of sheltered employment programmes, provided that more than 30 % of the <del>employees of</del> <u>persons on those workshops, economic operators or programmes are disabled or disadvantaged workers. The term "disadvantaged workers" shall include, inter alia, unemployed people who have particular problems integrating, and particularly vulnerable groups and minorities.</u></p> <p>The call for competition shall make reference to this provision.</p>

### Reason

This is a new provision, and it is therefore necessary to define which groups it covers, especially as it is more wide ranging than the current Article 19.

**Amendment 9**

COM(2011) 895 final

Article 34

COM(2011) 896 final

Article 19(7)

Text proposed by the Commission	CoR amendment
Member States shall ensure that, at the latest 2 years after the date provided for in Article 92(1), all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.	Member States shall <u>work actively to</u> ensure that, <del>at the latest 2 years after the date provided for in Article 92(1),</del> all procurement procedures under this Directive are performed using electronic means of communication, in particular e-submission, in accordance with the requirements of this Article.

**Reason**

Given that there are wide variations in conditions both for contracting authorities – particularly at local level – and for suppliers within different sectors, it is more appropriate to urge Member States to work actively to prepare for e-procurement than to impose it as a requirement with a short deadline.

**Amendment 10**

COM(2011) 896 final

Article 24

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><b>Choice of procedures</b></p> <p>1. In awarding their public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 30, a call for competition has been published in accordance with this Directive.</p> <p>Member States shall provide that contracting authorities may apply open or restricted procedures as regulated in this Directive.</p> <p>Member States may provide that contracting authorities may apply innovation partnerships as regulated in this Directive.</p> <p>They may also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:</p> <p>(a) with regard to works, where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;</p>	<p style="text-align: center;"><b>Choice of procedures</b></p> <p>1. In awarding their public contracts, contracting authorities shall apply the national procedures adjusted to be in conformity with this Directive, provided that, without prejudice to Article 30, a call for competition has been published in accordance with this Directive.</p> <p>Member States shall provide that contracting authorities may apply open or restricted procedures, <u>competitive procedures with negotiation or competitive dialogue, at the choice of the contracting authority,</u> as regulated in this Directive.</p> <p>Member States <del>may</del> <u>shall</u> provide that contracting authorities may apply innovation partnerships as regulated in this Directive.</p> <p><del>They may also provide that contracting authorities may use a competitive procedure with negotiation or a competitive dialogue in any of the following cases:</del></p> <p>(a) <del>with regard to works, where the works contract has as its object both the design and the execution of works within the meaning of Article 2(8) or where negotiations are needed to establish the legal or financial makeup of the project;</del></p>

Text proposed by the Commission	CoR amendment
(b) in respect of public works contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;	<del>(b) in respect of public works contracts, for works which are performed solely for purposes of research or innovation, testing or development and not with the aim of ensuring profitability or recovering research and development costs;</del>
(c) with regard to services or supplies, where the technical specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;	<del>(c) with regard to services or supplies, where the technical specifications cannot be established with sufficient precision with reference to any of the standards, European technical approvals, Common technical specifications or technical references within the meaning of points 2 to 5 of Annex VIII;</del>
(d) in the event of irregular or unacceptable tenders within the meaning of Article 30(2)(a) in response to an open or a restricted procedure;	<del>(d) in the event of irregular or unacceptable tenders within the meaning of Article 30(2)(a) in response to an open or a restricted procedure;</del>
(e) due to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.	<del>(e) due to specific circumstances related to the nature or the complexity of the works, supplies or services or the risks attaching thereto, the contract cannot be awarded without prior negotiations.</del>
Member States may decide not to transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.	<del>Member States may decide not to transpose into their national law the competitive procedure with negotiation, the competitive dialogue and the innovation partnership procedures.</del>

### Reason

The Committee of the Regions feels that the negotiated procedure should be subject to the same terms in the conventional sector as in the utilities sector, as should competitive dialogue. There is no reason to assume that authorities within the conventional sector are less suited to this procedure than entities in the utilities sector. It should be up to the contracting authority to determine which procedure should be used, depending on the procurement procedure in question.

It is also important to make clear that it is the contracting authority which must choose the appropriate procedure in each case, not the national or EU level. The EU and the national level must make all procedures available to contracting authorities. To do otherwise would mean different rules and procedures in different Member States, distortions of competition and an unlevel playing field.

### Amendment 11

COM(2011) 896 final

Article 30(2)(a)

Text proposed by the Commission	CoR amendment
(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.	(a) where no tenders or no suitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered <del>and that a report is sent to the Commission or the national oversight body designated according to Article 84 where they so request.</del>

**Reason**

Together with Article 84 (which introduces a new national oversight body), this reporting obligation produces unnecessary red tape. New administrative tasks absolutely must be avoided in the interests of simplifying EU public procurement law and making it more flexible. This addition should therefore be deleted.

**Amendment 12**

COM(2011) 895 final

Article 44(3)(d)(i) and 44(3)(e)

COM(2011) 896 final

Article 30(2)(c)(i) and 30(2)(d)

Text proposed by the Commission	CoR amendment
(c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:  (i) the absence of competition for technical reasons;  [...]	(c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:  (i) the absence of competition for technical <u>or legal</u> reasons;  [...]
(d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by force majeure, the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;	(d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by <del>force majeure</del> , <u>events unforeseeable by the contracting entities in question</u> , the time limits for the open, restricted or competitive procedures with negotiation cannot be complied with; the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority;

**Reason**

Legal reasons should be added to the article to cover situations where, for example, the contracting authority needs to construct a building (e.g. a school) in a particular place but the landowner will only agree to sell the land on condition that they can do the building work themselves.

Specifying "force majeure" is a stricter requirement than that currently laid down in Article 31(1)(c) of Directive 2004/18/EC. The current text should be used. During court proceedings to review a procurement procedure it should be possible to use the non-competitive negotiated procedure to purchase supplies and services that the contracting authority is obliged to provide under other legislation (such as food for care homes or heart valves for hospitals).

**Amendment 13**

COM(2011) 895 final

Article 45

COM(2011) 896 final

Article 31

**Framework agreements**

Text proposed by the Commission	CoR amendment
1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.	1. Contracting authorities may conclude framework agreements, provided that they apply the procedures provided for in this Directive.

Text proposed by the Commission	CoR amendment
<p>A framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.</p>	<p>A framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.</p>
<p>The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.</p>	<p><del>The term of a framework agreement shall not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.</del></p>
<p>2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.</p>	<p>2. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in this paragraph and paragraphs 3 and 4.</p>
<p>Those procedures may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators originally party to the framework agreement.</p>	<p><del>Those procedures may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators originally party to the framework agreement.</del></p>
<p>Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.</p>	<p>Contracts based on a framework agreement may under no circumstances make substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.</p>
<p>Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.</p>	<p><del>Contracting authorities shall not use framework agreements improperly or in such a way as to prevent, restrict or distort competition.</del></p>

### Reason

In the Committee of the Regions' view, framework agreements should in principle be regulated in the same way as they currently are under Directive 2004/17/EC, as there is no reason to lay down rules regarding, for example, the period of validity for such agreements and not for other types of contract. As is the case for dynamic purchasing systems, it should be possible to bring new economic operators on board during the term of the agreement, as this benefits both purchasers and vendors. The final sentence is unnecessary, as it follows from the principles.

### Amendment 14

COM(2011) 895 final

Article 45(4)

COM(2011) 896 final

Article 31(4)

### Framework agreements

Text proposed by the Commission	CoR amendment
<p>4. Where a framework agreement is concluded with more than one economic operator, it may be performed in one of the two following ways:</p>	<p>4. Where a framework agreement is concluded with more than one economic operator, it may be performed in <del>one of the two</del> following ways:</p>
<p>a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in the procurement documents;</p>	<p>a) <del>following</del> <u>where all the terms and conditions for the provision of works, services or supplies concerned are set out in</u> the framework agreement, <u>the contract shall be awarded</u> without reopening competition, <u>in accordance with</u>, <del>where it sets out all the terms governing the provision of the works, services and supplies concerned and the objective conditions for determining which of the economic operators, party to the framework agreement, shall perform them; the latter conditions shall be indicated in</del> <u>of the framework agreement</u> procurement documents; the latter conditions shall be indicated in the procurement documents;</p>



Text proposed by the Commission	CoR amendment
<p>b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, through reopening competition amongst the economic operators parties to the framework agreement.</p>	<p>b) where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, <u>the contract shall be awarded</u> through reopening competition amongst the economic operators parties to the framework agreement.</p> <p><u>The choice between the methods set out in subparagraphs (a) and (b) shall be based on objective criteria informed by the principles of non-discrimination and transparency. For any given framework agreement it shall be possible to choose between the methods in points (a) and (b) or a combination of those methods.</u></p>

### Reason

The Directive does not clarify how framework agreements are to be applied. This is notably the case with regard to implementing and choosing between direct awarding of contracts or reopening competition. To make implementation flexible, it should be possible to use a combination of these methods, so that the terms and conditions set can be referred to directly in the case of smaller contracts, while allowing for a competition to be reopened with the same framework agreement in the case of larger contracts.

### Amendment 15

COM(2011) 896 final

Article 37

### Occasional joint procurement

Text proposed by the Commission	CoR amendment
<p>1. One or more contracting authorities may agree to perform certain specific procurements jointly.</p> <p>2. Where one contracting authority alone conducts the procurement procedures concerned in all its stages from the publication of the call for competition to the end of the performance of the ensuing contract or contracts, that contracting authority shall have sole responsibility for fulfilling the obligations pursuant to this Directive.</p> <p>However, where the conduct of the procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting authorities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.</p>	<p>1. One or more contracting authorities may agree to perform certain specific procurements jointly.</p> <p>2. Where one contracting authority alone conducts the procurement procedures concerned in all its stages from the publication of the call for competition to the end of the performance of the ensuing contract or contracts, that contracting authority shall have sole responsibility for fulfilling the obligations pursuant to this Directive.</p> <p>However, where the conduct of the procurement procedures and the performance of the ensuing contracts is carried out by more than one of the participating contracting authorities, each shall continue to be responsible for fulfilling its obligations pursuant to this Directive in respect of the stages it conducts.</p> <p><u>3. Contracting authorities may engage in occasional joint procurement without applying the procedures provided for in this Directive, including where one or more of them is remunerated by the others for so doing.</u></p>

### Reason

This addition ensures that joint procurement is not unnecessarily onerous. The same principle should apply for occasional cooperation as for central purchasing bodies (see Article 35(5)).

**Amendment 16**

COM(2011) 895 final

Article 54

COM(2011) 896 final

Article 40

Text proposed by the Commission	CoR amendment
<p>1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.</p> <p>These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.</p> <p>The technical specifications shall also specify whether the transfer of intellectual property rights will be required.</p> <p>For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users.</p> <p>Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.</p>	<p>1. The technical specifications as defined in point 1 of Annex VIII shall be set out in the procurement documents. They shall define the characteristics required of a works, service or supply.</p> <p>These characteristics may also refer to the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2.</p> <p>The technical specifications shall also specify whether the transfer of intellectual property rights will be required.</p> <p><del>For all procurement the subject of which is intended for use by persons, whether general public or staff of the contracting authority, those technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for people with disabilities or design for all users. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disability or design for all users.</del></p> <p>Where mandatory accessibility standards are adopted by a legislative act of the Union, technical specifications shall, as far as accessibility criteria are concerned, be defined by reference thereto.</p>

**Reason**

The proposed text goes much too far, in view of the major variations that exist in procurement procedures. Moreover, provisions of this kind are often included in national building standards. The text of the current Article 23(1) of Directive 2004/18/EC and Article 34(1) of Directive 2004/17/EC should be retained.

**Amendment 17**

COM(2011) 896 final

Article 44

**Division of contracts into lots**

Text proposed by the Commission	CoR amendment
<p>1. Public contracts may be subdivided into homogenous or heterogeneous lots. For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with</p>	<p>1. Public contracts may be subdivided into homogenous or heterogeneous lots. <del>For contracts with a value equal to or greater than the thresholds provided for in Article 4 but not less than EUR 500 000, determined in accordance with</del></p>

Text proposed by the Commission	CoR amendment
<p>Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.</p> <p>Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.</p>	<p>Article 5, where the contracting authority does not deem it appropriate to split into lots, it shall provide in the contract notice or in the invitation to confirm interest a specific explanation of its reasons.</p> <p><del>Contracting authorities shall indicate, in the contract notice or in the invitation to confirm interest, whether tenders are limited to one or more lots only.</del></p>

### Reason

This imposes an unnecessary administrative burden on the contracting authorities and should therefore be deleted.

### Amendment 18

COM(2011) 896 final

Article 54(2)

Text proposed by the Commission	CoR amendment
<p><i>Article 54</i></p> <p>Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.</p>	<p><i>Article 54</i></p> <p>Contracting authorities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply, at least in an equivalent manner, with obligations established by Union <u>and national</u> legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI.</p>

### Reason

Tenderers must comply with national as well as EU legislation.

### Amendment 19

COM(2011) 896 final

Article 55(3)

Text proposed by the Commission	CoR amendment
<p><i>Article 55</i></p> <p>In order to apply the ground for exclusion referred to in point (d) of the first subparagraph, contracting authorities shall provide a method for the assessment of contractual performance that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment shall be communicated to the contractor in question, which shall be given the opportunity to object to the findings and to obtain judicial protection.</p>	<p><i>Article 55</i></p> <p><del>In order to apply the ground for exclusion referred to in point (d) of the first subparagraph, contracting authorities shall provide a method for the assessment of contractual performance that is based on objective and measurable criteria and applied in a systematic, consistent and transparent way. Any performance assessment shall be communicated to the contractor in question, which shall be given the opportunity to object to the findings and to obtain judicial protection.</del></p>

**Reason**

The explanation given in the last paragraph of Article 55(3) is unintelligible and thus reduces legal certainty, which would result in more actions being brought. The paragraph also introduces new obligations for contracting authorities which should be cut in order to avoid extra red tape.

**Amendment 20**

COM(2011) 895 final

Article 76

COM(2011) 896 final

Article 66

**Contract award criteria**

Text proposed by the Commission	CoR amendment
<p>1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which contracting authorities shall base the award of public contracts shall be one of the following:</p> <p>(a) the most economically advantageous tender;</p> <p>(b) the lowest cost.</p> <p>Costs may be assessed, on the choice of the contracting authority, on the basis of the price only or using a cost-effectiveness approach, such as a life-cycle costing approach, under the conditions set out in Article 67.</p> <p>2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price or costs referred to in point (b) of paragraph 1, other criteria linked to the subject-matter of the public contract in question, such as:</p> <p>(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character;</p> <p>(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;</p> <p>(c) after-sales service and technical assistance, delivery date and delivery period or period of completion;</p>	<p>1. Without prejudice to national laws, regulations or administrative provisions concerning the remuneration of certain services, the criteria on which contracting authorities shall base the award of public contracts shall be one of the following:</p> <p>(a) the most economically advantageous tender;</p> <p>(b) the lowest <u>cost price</u>.</p> <p><del>Costs may be assessed, on the choice of the contracting authority, on the basis of the price only or using a cost-effectiveness approach, such as a life cycle costing approach, under the conditions set out in Article 67.</del></p> <p>2. The most economically advantageous tender referred to in point (a) of paragraph 1 from the point of view of the contracting authority shall be identified on the basis of criteria linked to the subject-matter of the public contract in question. Those criteria shall include, in addition to the price <del>or costs referred to in point (b) of paragraph 1</del>, other criteria linked to the subject-matter of the public contract in question, such as:</p> <p>(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental characteristics and innovative character <u>and short production circuits</u>;</p> <p>(b) for service contracts and contracts involving the design of works, the organisation, qualification and experience of the staff assigned to performing the contract in question may be taken into consideration, with the consequence that, following the award of the contract, such staff may only be replaced with the consent of the contracting authority, which must verify that replacements ensure equivalent organisation and quality;</p> <p>(c) after-sales service and technical assistance, delivery date and delivery period or period of completion;</p>

Text proposed by the Commission	CoR amendment
(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.	(d) the specific process of production or provision of the requested works, supplies or services or of any other stage of its life cycle as referred to in point (22) of Article 2, to the extent that those criteria are specified in accordance with paragraph 4 and they concern factors directly involved in these processes and characterise the specific process of production or provision of the requested works, supplies or services.  (e) <u>criteria related to social considerations.</u>

### Reason

It is positive that contracting authorities can choose between the most economically advantageous tender and the lowest cost. However, the term used in the current directive – "lowest price" – should be retained, because "lowest cost" indicates that factors other than the price will be considered, as cost is a broader term than price. The "most economically advantageous tender" criterion is the one to use if other parameters such as life-cycle costs are to be taken into account.

In some cases, the contracting authority indicates the price they will pay in the tender documentation, and it must be made absolutely clear that this is an option.

The reason for including the short production criterion is to give contracting authorities added value for certain products and services. This added value consists of the fact that short production circuits usually enable products and services to reach purchasing bodies more quickly, with faster and more flexible adaptation to their requirements. In addition, the criterion also makes for a convincing improvement in environmental standards (shorter transport and storage times, less emissions), which will ultimately benefit both purchasing bodies and the public. Thus, purchasing bodies would have the option of including in their award criteria parameters giving broader indications in certain categories regarding the tender of a particular economic operator, which may meet the public procurement requirements even better.

It should also be expressly permitted to consider social criteria, for example by awarding bonus points for a corporate equal opportunities policy for employees, and for recruiting more long-term unemployed people.

### Amendment 21

COM(2011) 896 final

Article 66(3)

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><i>Article 66</i></p> <p>Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender referred to in point (a) of paragraph 1 and in paragraph 2.</p>	<p style="text-align: center;"><i>Article 66</i></p> <p><del>Member States may provide that the award of certain types of contracts shall be based on the most economically advantageous tender referred to in point (a) of paragraph 1 and in paragraph 2.</del></p>

### Reason

The purpose of modernising public procurement is to provide contracting authorities and tenderers with as much flexibility as possible. Contracting authorities must therefore be able to decide themselves whether they grant contracts based on the most economically advantageous tender or on the lowest price. Member States should not anticipate the needs of local authorities in this regard. If a contract can no longer be awarded based on the lowest price, this would significantly limit opportunities for small companies to compete. Article 66(3) should therefore be deleted.

**Amendment 22**

COM(2011) 895 final

Article 76(4)

COM(2011) 896 final

Article 66(4)

**Contract award criteria**

Text proposed by the Commission	CoR amendment
4. Award criteria shall not confer an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.	<del>4. Award criteria shall not confer an unrestricted freedom of choice on the contracting authority. They shall ensure the possibility of effective competition and shall be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. Contracting authorities shall verify effectively, on the basis of the information and proof provided by the tenderers, whether the tenders meet the award criteria.</del>

**Reason**

This provision is unnecessary and adds nothing new, and should therefore be deleted. The substance of the provision is already covered by the general principles.

**Amendment 23**

COM(2011) 896 final

Article 73(a)

Text proposed by the Commission	CoR amendment
(a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4);	<del>(a) the exceptions provided for in Article 11 cease to apply following a private participation in the legal person awarded the contract pursuant to Article 11(4);</del>

**Reason**

Consequential amendment to the Commission text following deletion of Article 11(5) of COM(2011) 896 final and Article 21(5) of COM(2011) 895 final (Amendment 7). This situation can no longer apply after the award of the contract.

**Amendment 24**

COM(2011) 895 final

Article 77

COM(2011) 896 final

Article 67

**Life-cycle costing**

Text proposed by the Commission	CoR amendment
3. Whenever a common methodology for the calculation of life-cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 76 (1).	<del>3. Whenever a common methodology for the calculation of life cycle costs is adopted as part of a legislative act of the Union, including by delegated acts pursuant to sector specific legislation, it shall be applied where life-cycle costing is included in the award criteria referred to in Article 76 (1).</del>

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

### Reason

The Committee of the Regions supports the Europe 2020 strategy goals and acknowledges the importance of a sustainable, socially responsible and pro-innovation public procurement process. It is also a good thing that the Commission is encouraging contracting authorities to take account of life-cycle costs. A great deal of work is under way in this field, but much still remains to be done, and the Committee feels that the requirement to use EU methods in this case is too far-reaching in the current circumstances.

### Amendment 25

COM(2011) 895 final

Article 79

COM(2011) 896 final

Article 69

### Abnormally low tenders

Text proposed by the Commission	CoR amendment
<p>1. Contracting authorities shall require economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:</p> <p>(a) the price or cost charged is more than 50 % lower than the average price or costs of the remaining tenders;</p> <p>(b) the price or cost charged is more than 20 % lower than the price or costs of the second lowest tender;</p> <p>(c) at least five tenders have been submitted.</p>	<p><del>1. Contracting authorities shall require economic operators to explain the price or costs charged, where all of the following conditions are fulfilled:</del></p> <p><del>(a) the price or cost charged is more than 50 % lower than the average price or costs of the remaining tenders;</del></p> <p><del>(b) the price or cost charged is more than 20 % lower than the price or costs of the second lowest tender;</del></p> <p><del>(c) at least five tenders have been submitted.</del></p> <p><u>1. If, for a given contract, tenders appear to be abnormally low in relation to the goods, works or services, the contracting authority shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant. Those details may relate in particular to:</u></p> <p><u>(a) the economics of the construction method, the manufacturing process or the services provided;</u></p> <p><u>(b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;</u></p> <p><u>(c) the originality of the work, supplies or services proposed by the tenderer;</u></p>

Text proposed by the Commission	CoR amendment
<p>2. Where tenders appear to be abnormally low for other reasons, contracting authorities may also request such explanations.</p> <p>3. The explanations referred to in paragraphs 1 and 2 may in particular relate to:</p> <p>(a) the economics of the construction method, the manufacturing process or the services provided;</p> <p>(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;</p> <p>(c) the originality of the work, supplies or services proposed by the tenderer;</p> <p>(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI or, where not applicable, with other provisions ensuring an equivalent level of protection;</p> <p>(e) the possibility of the tenderer obtaining State aid.</p> <p>4. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.</p> <p>Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.</p>	<p><del>(d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed;</del></p> <p><del>(e) the possibility of the tenderer obtaining State aid.</del></p> <p><u>2. The contracting authority shall verify those constituent elements by consulting the tenderer, taking account of the evidence supplied.</u></p> <p><u>3. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender can be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was granted legally. Where the contracting authority rejects a tender in these circumstances, it shall inform the Commission of that fact.</u></p> <p><del>2-4. Where tenders appear to be abnormally low for other reasons, contracting authorities may also request such explanations.</del></p> <p><del>3. The explanations referred to in paragraphs 1 and 2 may in particular relate to</del></p> <p><del>(a) the economics of the construction method, the manufacturing process or the services provided;</del></p> <p><del>(b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the execution of the work or for the supply of the goods or services;</del></p> <p><del>(c) the originality of the work, supplies or services proposed by the tenderer;</del></p> <p><del>(d) compliance, at least in an equivalent manner, with obligations established by Union legislation in the field of social and labour law or environmental law or of the international social and environmental law provisions listed in Annex XI or, where not applicable, with other provisions ensuring an equivalent level of protection;</del></p> <p><del>(e) the possibility of the tenderer obtaining State aid.</del></p> <p><u>4. The contracting authority shall verify the information provided by consulting the tenderer. It may only reject the tender where the evidence does not justify the low level of price or costs charged, taking into account the elements referred to in paragraph 3.</u></p> <p><del>Contracting authorities shall reject the tender, where they have established that the tender is abnormally low because it does not comply with obligations established by Union legislation in the field of social and labour law or environmental law or by the international social and environmental law provisions listed in Annex XI.</del></p>



Text proposed by the Commission	CoR amendment
<p>5. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.</p>	<p><del>5. Where a contracting authority establishes that a tender is abnormally low because the tenderer has obtained State aid, the tender may be rejected on that ground alone only after consultation with the tenderer where the latter is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 of the Treaty. Where the contracting authority rejects a tender in those circumstances, it shall inform the Commission thereof.</del></p>
<p>6. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.</p>	<p><del>6. Upon request, Member States shall make available to other Member States, in accordance with Article 88, any information relating to the evidence and documents produced in relation to details listed in paragraph 3.</del></p>

### Reason

The Committee of the Regions prefers the wording in Article 55 of the current Directive 2004/18/EC on abnormally low tenders, because the proposed text would impose an administrative burden both on contracting authorities and on suppliers. The proposed text also reduces the contracting authority's room for manoeuvre in this field, which is unfortunate.

### Amendment 26

COM(2011) 895 final

Article 81

COM(2011) 896 final

Article 71

### Subcontracting

Text proposed by the Commission	CoR amendment
<p>1. In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.</p>	<p><del>1. In the procurement documents, the contracting authority may ask or may be required by a Member State to ask the tenderer to indicate in its tender any share of the contract it may intend to subcontract to third parties and any proposed subcontractors.</del></p>
<p>2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.</p>	<p><del>2. Member States may provide that at the request of the subcontractor and where the nature of the contract so allows, the contracting authority shall transfer due payments directly to the subcontractor for services, supplies or works provided to the main contractor. In such case, Member States shall put in place appropriate mechanisms permitting the main contractor to object to undue payments. The arrangements concerning that mode of payment shall be set out in the procurement documents.</del></p>
<p>3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.</p>	<p><del>3. Paragraphs 1 and 2 shall be without prejudice to the question of the principal economic operator's liability.</del></p>

**Reason**

The relationship between contractors and subcontractors falls under competition law and national contract law, which should not be affected by this directive.

This provision would also create legal uncertainty, because a subcontractor that carries out work for the contracting authority for payment is a contractor, not a subcontractor. In addition, these provisions may restrict the contracting authority's ability to withhold payment until the work has been completed in accordance with the contract.

**Amendment 27**

COM(2011) 895 final

Article 82

COM(2011) 896 final

Article 72

**Modification of contracts during their term**

Text proposed by the Commission	CoR amendment
<p>1. A substantial modification of the provisions of a public contract during its term shall be considered as a new award for the purposes of this Directive and shall require a new procurement procedure in accordance with this Directive.</p>	<p><del>1. A substantial modification of the provisions of a public contract during its term shall be considered as a new award for the purposes of this Directive and shall require a new procurement procedure in accordance with this Directive.</del></p>
<p>2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:</p>	<p><del>2. A modification of a contract during its term shall be considered substantial within the meaning of paragraph 1, where it renders the contract substantially different from the one initially concluded. In any case, without prejudice to paragraph 3 and 4, a modification shall be considered substantial where one of the following conditions is met:</del></p>
<p>(a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the selection of other candidates than those initially selected or would have allowed for awarding the contract to another tenderer;</p>	<p><del>(a) the modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the selection of other candidates than those initially selected or would have allowed for awarding the contract to another tenderer;</del></p>
<p>(b) the modification changes the economic balance of the contract in favour of the contractor;</p>	<p><del>(b) the modification changes the economic balance of the contract in favour of the contractor;</del></p>
<p>(c) the modification extends the scope of the contract considerably to encompass supplies, services or works not initially covered.</p>	<p><del>(c) the modification extends the scope of the contract considerably to encompass supplies, services or works not initially covered.</del></p>
<p>3. The replacement of the contractual partner shall be considered a substantial modification within the meaning of paragraph 1.</p>	<p><del>3. The replacement of the contractual partner shall be considered a substantial modification within the meaning of paragraph 1.</del></p>
<p>However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.</p>	<p><del>However, the first subparagraph shall not apply in the event of universal or partial succession into the position of the initial contractor, following corporate restructuring operations or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive.</del></p>

Text proposed by the Commission	CoR amendment
<p>4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below 5 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.</p>	<p><del>4. Where the value of a modification can be expressed in monetary terms, the modification shall not be considered to be substantial within the meaning of paragraph 1, where its value does not exceed the thresholds set out in Article 4 and where it is below 5 % of the price of the initial contract, provided that the modification does not alter the overall nature of the contract. Where several successive modifications are made, the value shall be assessed on the basis of the cumulative value of the successive modifications.</del></p>
<p>5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.</p>	<p><del>5. Contract modifications shall not be considered substantial within the meaning of paragraph 1 where they have been provided for in the procurement documents in clear, precise and unequivocal review clauses or options. Such clauses shall state the scope and nature of possible modifications or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract.</del></p>
<p>6. By way of derogation from paragraph 1, a substantial modification shall not require a new procurement procedure where the following cumulative conditions are fulfilled:</p>	<p><del>6. By way of derogation from paragraph 1, a substantial modification shall not require a new procurement procedure where the following cumulative conditions are fulfilled:</del></p>
<p>(a) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;</p>	<p><del>(a) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;</del></p>
<p>(b) the modification does not alter the overall nature of the contract;</p>	<p><del>(b) the modification does not alter the overall nature of the contract;</del></p>
<p>(c) any increase in price is not higher than 50 % of the value of the original contract.</p>	<p><del>(c) any increase in price is not higher than 50 % of the value of the original contract.</del></p>
<p>Contracting authorities shall publish in the <i>Official Journal of the European Union</i> a notice on such modifications. Such notices shall contain the information set out in Annex VI part G and be published in accordance with Article 49.</p>	<p><del>Contracting authorities shall publish in the <i>Official Journal of the European Union</i> a notice on such modifications. Such notices shall contain the information set out in Annex VI part G and be published in accordance with Article 49.</del></p>
<p>7. Contracting authorities shall not have recourse to modifications of the contract in the following cases:</p>	<p><del>7. Contracting authorities shall not have recourse to modifications of the contract in the following cases:</del></p>
<p>(a) where the modification would aim at remedying deficiencies in the performance of the contractor or the consequences, which can be remedied through the enforcement of contractual obligations;</p>	<p><del>(a) where the modification would aim at remedying deficiencies in the performance of the contractor or the consequences, which can be remedied through the enforcement of contractual obligations;</del></p>
<p>(b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor.</p>	<p><del>(b) where the modification would aim at compensating risks of price increases that have been hedged by the contractor.</del></p>

## Reason

The current directives include procedural rules for carrying out procurement. They do not include provisions on the modification of contracts during their term, and nor should the new directives, as these provisions impose an unnecessary administrative burden on contracting authorities and reduce flexibility. If the Commission wants to provide information on case law in this area, an interpretative communication would be a better medium.

**Amendment 28**

COM(2011) 896 final

Article 83

Text proposed by the Commission	CoR amendment
<i>Article 83</i>	<i>Article 83</i>
In conformity with Council Directive 89/665/EEC, Member States shall ensure correct application of this Directive by effective, available and transparent mechanisms which complement the system in place for the review of decisions taken by contracting authorities.	<del>In conformity with Council Directive 89/665/EEC, Member States shall ensure correct application of this Directive by effective, available and transparent mechanisms which complement the system in place for the review of decisions taken by contracting authorities.</del>

**Reason**

It is unnecessary to mention in a Directive that it is to be applied correctly. Existing systems for monitoring the decisions of contracting authorities are adequate. In the interests of simplification and flexibility, no superfluous systems should be created.

**Amendment 29**

COM(2011) 895 final

Article 93

COM(2011) 896 final

Article 84

Text proposed by the Commission	CoR amendment
<b>Public oversight</b>	<del><b>Public oversight</b></del>
<p>1. Member States shall appoint a single independent body responsible for the oversight and coordination of implementation activities (hereinafter 'the oversight body'). Member States shall inform the Commission of their designation.</p> <p>All contracting authorities shall be subject to such oversight.</p> <p>2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests are avoided. The system of public oversight shall be transparent. For this purpose, all guidance and opinion documents and an annual report illustrating the implementation and application of rules laid down in this Directive shall be published.</p> <p>The annual report shall include the following:</p> <p>(a) an indication of the success rate of small and medium-sized enterprises (SMEs) in public procurement; where the percentage is lower than 50 % in terms of values of contracts awarded to SMEs, the report shall provide an analysis of the reasons therefore;</p> <p>(b) a global overview of the implementation of sustainable procurement policies, including on procedures taking into account considerations linked to the protection of the environment, social inclusion including accessibility for persons with disabilities or fostering innovation;</p>	<p><del>1. Member States shall appoint a single independent body responsible for the oversight and coordination of implementation activities (hereinafter 'the oversight body'). Member States shall inform the Commission of their designation.</del></p> <p><del>All contracting authorities shall be subject to such oversight.</del></p> <p><del>2. The competent authorities involved in the implementation activities shall be organised in such a manner that conflicts of interests are avoided. The system of public oversight shall be transparent. For this purpose, all guidance and opinion documents and an annual report illustrating the implementation and application of rules laid down in this Directive shall be published.</del></p> <p><del>The annual report shall include the following:</del></p> <p><del>(a) an indication of the success rate of small and medium-sized enterprises (SMEs) in public procurement; where the percentage is lower than 50 % in terms of values of contracts awarded to SMEs, the report shall provide an analysis of the reasons therefore;</del></p> <p><del>(b) a global overview of the implementation of sustainable procurement policies, including on procedures taking into account considerations linked to the protection of the environment, social inclusion including accessibility for persons with disabilities, or fostering innovation;</del></p>

Text proposed by the Commission	CoR amendment
(c) information on the monitoring and follow-up of breaches to procurement rules affecting the budget of the Union in accordance with paragraphs 3 to 5 of the present article;	<del>(c) information on the monitoring and follow up of breaches to procurement rules affecting the budget of the Union in accordance with paragraphs 3 to 5 of the present article;</del>
(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union.	<del>(d) centralized data about reported cases of fraud, corruption, conflict of interests and other serious irregularities in the field of public procurement, including those affecting projects cofinanced by the budget of the Union.</del>
3 The oversight body shall be responsible for the following tasks:	<del>3 The oversight body shall be responsible for the following tasks:</del>
(a) monitoring the application of public procurement rules and the related practice by contracting authorities and in particular by central purchasing bodies;	<del>(a) monitoring the application of public procurement rules and the related practice by contracting authorities and in particular by central purchasing bodies;</del>
(b) providing legal advice to contracting authorities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;	<del>(b) providing legal advice to contracting authorities on the interpretation of public procurement rules and principles and on the application of public procurement rules in specific cases;</del>
(c) issuing own-initiative opinions and guidance on questions of general interest pertaining to the interpretation and application of public procurement rules, on recurring questions and on systemic difficulties related to the application of public procurement rules, in the light of the provisions of this Directive and of the relevant case-law of the Court of Justice of the European Union;	<del>(c) issuing own-initiative opinions and guidance on questions of general interest pertaining to the interpretation and application of public procurement rules, on recurring questions and on systemic difficulties related to the application of public procurement rules, in the light of the provisions of this Directive and of the relevant case law of the Court of Justice of the European Union;</del>
(d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;	<del>(d) establishing and applying comprehensive, actionable 'red flag' indicator systems to prevent, detect and adequately report instances of procurement fraud, corruption, conflict of interest and other serious irregularities;</del>
(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;	<del>(e) drawing the attention of the national competent institutions, including auditing authorities, to specific violations detected and to systemic problems;</del>
(f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting authorities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;	<del>(f) examining complaints from citizens and businesses on the application of public procurement rules in specific cases and transmitting the analysis to the competent contracting authorities, which shall have the obligation to take it into account in their decisions or, where the analysis is not followed, to explain the reasons for disregarding it;</del>
(g) monitoring the decisions taken by national courts and authorities following a ruling given by the Court of Justice of the European Union on the basis of Article 267 of the Treaty or findings of the European Court of Auditors establishing violations of Union public procurement rules related to projects cofinanced by the Union; the oversight body shall report to the European Anti-Fraud Office any infringement to Union procurement procedures where these were related to contracts directly or indirectly funded by the European Union.	<del>(g) monitoring the decisions taken by national courts and authorities following a ruling given by the Court of Justice of the European Union on the basis of Article 267 of the Treaty or findings of the European Court of Auditors establishing violations of Union public procurement rules related to projects cofinanced by the Union; the oversight body shall report to the European Anti-Fraud Office any infringement to Union procurement procedures where these were related to contracts directly or indirectly funded by the European Union.</del>

Text proposed by the Commission	CoR amendment
<p>The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of directive 89/665/EEC.</p>	<p><del>The tasks referred to in point (e) shall be without prejudice to the exercise of rights of appeal under national law or under the system established on the basis of directive 89/665/EEC.</del></p>
<p>Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting authorities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.</p>	<p><del>Member States shall empower the oversight body to seize the jurisdiction competent according to national law for the review of contracting authorities' decisions where it has detected a violation in the course of its monitoring and legal advising activity.</del></p>
<p>4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.</p>	<p><del>4. Without prejudice to the general procedures and working methods established by the Commission for its communications and contacts with Member States, the oversight body shall act as a specific contact point for the Commission when it monitors the application of Union law and the implementation of the budget from the Union on the basis of Article 17 of the Treaty on the European Union and Article 317 of the Treaty on the Functioning of the European Union. It shall report to the Commission any violation of this Directive in procurement procedures for the award of contracts directly or indirectly funded by the Union.</del></p>
<p>The Commission may in particular refer to the oversight body the treatment of individual cases where a contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public procurement rules and principles identified by the Commission.</p>	<p><del>The Commission may in particular refer to the oversight body the treatment of individual cases where a contract is not yet concluded or a review procedure can still be carried out. It may also entrust the oversight body with the monitoring activities necessary to ensure the implementation of the measures to which Member States are committed in order to remedy a violation of Union public procurement rules and principles identified by the Commission.</del></p>
<p>The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.</p>	<p><del>The Commission may require the oversight body to analyse alleged breaches to Union public procurement rules affecting projects co-financed by the budget of the Union. The Commission may entrust the oversight body to follow-up certain cases and to ensure that the appropriate consequences of breaches to Union public procurement rules affecting projects co-financed are taken by the competent national authorities which will be obliged to follow its instructions.</del></p>
<p>5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting authorities' decisions comply with this Directive and the principles of the Treaty shall not replace or prejudice the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case pursuant to paragraph 4, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.</p>	<p><del>5. The investigation and enforcement activities carried out by the oversight body to ensure that contracting authorities' decisions comply with this Directive and the principles of the Treaty shall not replace or prejudice the institutional role of the Commission as guardian of the Treaty. When the Commission decides to refer the treatment of an individual case pursuant to paragraph 4, it shall also retain the right to intervene in accordance with the powers conferred to it by the Treaty.</del></p>
<p>6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or greater than</p>	<p><del>6. Contracting authorities shall transmit to the national oversight body the full text of all concluded contracts with a value equal to or greater than</del></p>
<p>(a) EUR 1 000 000 in the case of public supply contracts or public service contracts;</p>	<p><del>(a) EUR 1 000 000 in the case of public supply contracts or public service contracts;</del></p>

Text proposed by the Commission	CoR amendment
<p>(b) EUR 10 000 000 in the case of public works contracts.</p> <p>7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon written request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.</p> <p>Access to the parts that may be released shall be given within a reasonable delay and no later than 45 days from the date of the request.</p> <p>The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of information should be allowed to make it public.</p> <p>8. A summary of all the activities carried out by the oversight body in accordance with paragraphs 1 to 7 shall be included in the annual report mentioned in paragraph 2.</p>	<p><del>(b) EUR 10 000 000 in the case of public works contracts.</del></p> <p><del>7. Without prejudice to the national law concerning access to information, and in accordance with national and EU legislation on data protection, the oversight body shall, upon written request, give unrestricted and full direct access, free of charge, to the concluded contracts referred to in paragraph 6. Access to certain parts of the contracts may be refused where their disclosure would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair competition between them.</del></p> <p><del>Access to the parts that may be released shall be given within a reasonable delay and no later than 45 days from the date of the request.</del></p> <p><del>The applicants filing a request for access to a contract shall not need to show any direct or indirect interest related to that particular contract. The recipient of information should be allowed to make it public.</del></p> <p><del>8. A summary of all the activities carried out by the oversight body in accordance with paragraphs 1 to 7 shall be included in the annual report mentioned in paragraph 2.</del></p>

## Reason

The requirement to set up national oversight bodies and to send contracts to them is a clear infringement of the subsidiarity principle. It is up to the Member States to organise their own public administration. Monitoring of compliance with procurement rules at national level is a matter for the national courts, oversight bodies and audit bodies. The rules also create new administrative burdens for contracting authorities.

## Amendment 30

COM(2011) 896 final

Article 85, 1st paragraph

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><i>Article 85</i></p> <p>For every contract or framework agreement, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:</p> <p>(a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;</p> <p>(b) the names of the successful candidates or tenderers and the reasons for their selection;</p> <p>(c) the names of the candidates or tenderers rejected and the reasons for their rejection;</p>	<p style="text-align: center;"><i>Article 85</i></p> <p><del>For every contract or framework agreement, and every time a dynamic purchasing system is established, contracting authorities shall draw up a written report which shall include at least the following:</del></p> <p><del>(a) the name and address of the contracting authority, the subject-matter and value of the contract, framework agreement or dynamic purchasing system;</del></p> <p><del>(b) the names of the successful candidates or tenderers and the reasons for their selection;</del></p> <p><del>(c) the names of the candidates or tenderers rejected and the reasons for their rejection;</del></p>

Text proposed by the Commission	CoR amendment
(d) the reasons for the rejection of tenders found to be abnormally low;	<del>(d) the reasons for the rejection of tenders found to be abnormally low;</del>
(e) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;	<del>(e) the name of the successful tenderer and the reasons why its tender was selected and, where known, the share of the contract or framework agreement which the successful tenderer intends to subcontract to third parties;</del>
(f) for negotiated procedures without prior publication, the circumstances referred to in Article 30 which justify the use of this procedure;	<del>(f) for negotiated procedures without prior publication, the circumstances referred to in Article 30 which justify the use of this procedure;</del>
(g) where necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system	<del>(g) where necessary, the reasons why the contracting authority has decided not to award a contract or framework agreement or to establish a dynamic purchasing system</del>
(h) where applicable, conflicts of interests detected and subsequent measures taken.	<del>(h) where applicable, conflicts of interests detected and subsequent measures taken.</del>

### Reason

These documentation requirements represent a disproportionate burden for local authorities and serve no purpose. The aim of the reform is precisely to remove superfluous documentation requirements, and not to create new red tape.

### Amendment 31

COM(2011) 896 final

Article 85, last two subparagraphs

### Individual reports on procedures for the award of contracts

Text proposed by the Commission	CoR amendment
<p style="text-align: center;"><i>Article 85</i></p>	<p style="text-align: center;"><i>Article 85</i></p>
<p style="text-align: center;"><b>Individual reports on procedures for the award of contracts</b></p>	<p style="text-align: center;"><del><b>Individual reports on procedures for the award of contracts</b></del></p>
<p>The contracting authorities shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.</p>	<p><del>The contracting authority shall document the progress of all procurement procedures, whether or not those are conducted by electronic means. To that end, they shall document all stages in the procurement procedure, including all communications with economic operators and internal deliberations, preparation of the tenders, dialogue or negotiation if any, selection and award of the contract.</del></p>
<p>The report, or its main elements, shall be communicated to the Commission or to the national oversight body where they so request.</p>	<p><del>The report, or its main elements, shall be communicated to the Commission or to the national oversight body where they so request.</del></p>

### Reason

In the Committee of the Regions' view, the reporting system set out in Article 43 of Directive 2004/18/EC is preferable to the proposed system, and is easier for contracting authorities to administrate.



**Amendment 32**

COM(2011) 895 final

Article 95

COM(2011) 896 final

Article 86

Text proposed by the Commission	CoR amendment
<b>National reporting and lists of contracting authorities</b>	<del><b>National reporting and lists of contracting authorities</b></del>
1. The bodies established or appointed in accordance with Article 84 shall forward to the Commission an implementation and statistical report on each year, based on a standard form, not later than 31 October of the following year.	<del>1. The bodies established or appointed in accordance with Article 84 shall forward to the Commission an implementation and statistical report on each year, based on a standard form, not later than 31 October of the following year.</del>
2. The report referred to in paragraph 1 shall contain at least the following information:	<del>2. The report referred to in paragraph 1 shall contain at least the following information:</del>
(a) a complete and up-to-date list of all central government authorities, sub-central contracting authorities and bodies governed by public law, including sub-central authorities and associations of contracting authorities awarding public contracts or framework agreements, indicating for each authority the unique identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;	<del>(a) a complete and up to date list of all central government authorities, sub-central contracting authorities and bodies governed by public law, including sub-central authorities and associations of contracting authorities awarding public contracts or framework agreements, indicating for each authority the unique identification number where such number is provided for in national legislation; this list shall be grouped by type of authority;</del>
(b) a complete and up-to-date list of all central purchasing bodies;	<del>(b) a complete and up-to date list of all central purchasing bodies;</del>
(c) for all contracts above the thresholds laid down in Article 4 of this Directive:	<del>(c) for all contracts above the thresholds laid down in Article 4 of this Directive:</del>
(i) the number and value of contracts awarded broken down for each type of authority by procedure and by works, supplies and services identified by division of the CPV nomenclature;	<del>(i) the number and value of contracts awarded broken down for each type of authority by procedure and by works, supplies and services identified by division of the CPV nomenclature;</del>
(ii) where the contracts have been concluded under the negotiated procedure without prior publication, the data referred to in point (i) shall also be broken down according to the circumstances referred to in Article 30 and shall specify the number and value of contracts awarded, by Member State and third country of the successful contractor;	<del>(ii) where the contracts have been concluded under the negotiated procedure without prior publication, the data referred to in point (i) shall also be broken down according to the circumstances referred to in Article 30 and shall specify the number and value of contracts awarded, by Member State and third country of the successful contractor;</del>
(d) for all contracts which fall below the thresholds laid down in Article 4 of this Directive, but would be covered by this Directive if their value exceeded the threshold, the number and value of contracts awarded broken down by each type of authority.	<del>(d) for all contracts which fall below the thresholds laid down in Article 4 of this Directive, but would be covered by this Directive if their value exceeded the threshold, the number and value of contracts awarded broken down by each type of authority.</del>
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend Annex I, in order to update the list of contracting authorities following notifications from Member States, where such amendments prove necessary to correctly identify contracting authorities;	<del>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 89 to amend Annex I, in order to update the list of contracting authorities following notifications from Member States, where such amendments prove necessary to correctly identify contracting authorities;</del>

Text proposed by the Commission	CoR amendment
<p>The Commission may periodically publish the list of bodies governed by public law transmitted according to point (a) of paragraph 2 for information in the <i>Official Journal of the European Union</i>.</p> <p>4. Member States shall make available to the Commission information on their institutional organisation related to the implementation, monitoring and enforcement of this Directive, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules.</p> <p>5. The Commission shall establish the standard form for the annual implementation and statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.</p>	<p><del>The Commission may periodically publish the list of bodies governed by public law transmitted according to point (a) of paragraph 2 for information in the <i>Official Journal of the European Union</i>.</del></p> <p><del>4. Member States shall make available to the Commission information on their institutional organisation related to the implementation, monitoring and enforcement of this Directive, as well as on national initiatives taken to provide guidance on or assist in implementation of Union rules on public procurement, or to respond to challenges confronting the implementation of those rules.</del></p> <p><del>5. The Commission shall establish the standard form for the annual implementation and statistical report referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 91.</del></p>

### Reason

The proposed provisions should be deleted. They would create a great deal of administrative work for the bodies compiling all this information and for the contracting authorities that would have to process it.

### Amendment 33

COM(2011) 895 final

Article 96

COM(2011) 896 final

Article 87

Text proposed by the Commission	CoR amendment
<p><b>Assistance to contracting authorities and businesses</b></p> <p>1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions.</p> <p>2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive, Member States shall ensure that appropriate assistance can be obtained, including by electronic means or using existing networks dedicated to business assistance.</p> <p>3. Specific administrative assistance shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such assistance shall at least cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.</p>	<p><del><b>Assistance to contracting authorities and businesses</b></del></p> <p><del>1. Member States shall make available technical support structures in order to provide legal and economic advice, guidance and assistance to contracting authorities in preparing and carrying out procurement procedures. Member States shall also ensure that each contracting authority can obtain competent assistance and advice on individual questions.</del></p> <p><del>2. With a view to improving access to public procurement for economic operators, in particular SMEs, and in order to facilitate correct understanding of the provisions of this Directive, Member States shall ensure that appropriate assistance can be obtained, including by electronic means or using existing networks dedicated to business assistance.</del></p> <p><del>3. Specific administrative assistance shall be available to economic operators intending to participate in a procurement procedure in another Member State. Such assistance shall at least cover administrative requirements in the Member State concerned, as well as possible obligations related to electronic procurement.</del></p>

Text proposed by the Commission	CoR amendment
<p>Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection, and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract.</p>	<p><del>Member States shall ensure that interested economic operators have easy access to appropriate information on the obligations relating to taxes, environmental protection, and to social and labour law obligations, which are in force in the Member State, in the region or locality where the works are to be carried out or the services are to be provided and which will be applicable to the works carried out on site or to the services provided during the performance of the contract.</del></p>
<p>4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.</p>	<p><del>4. For the purposes of paragraphs 1, 2 and 3, Member States may appoint a single body or several bodies or administrative structures. Member States shall ensure due coordination between those bodies and structures.</del></p>

### Reason

Organising activities to assist procurement at national level is a matter for the Member States, and this article should be deleted. There would probably be less need for assistance in understanding the procurement rules if the regulatory framework were simpler.

### Amendment 34

COM(2011) 896 final

Article 88(3)

Text proposed by the Commission	CoR amendment
<p><i>Article 88</i></p>	<p><i>Article 88</i></p>
<p>For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, the oversight bodies and the Commission. Member States shall publish and regularly update the list of liaison points. The oversight body shall be in charge of the coordination of such liaison points.</p>	<p>For the purposes of this Article, Member States shall designate one or more liaison points, the contact details of which shall be communicated to the other Member States, <del>the oversight bodies</del> and the Commission. Member States shall publish and regularly update the list of liaison points. <del>The oversight body shall be in charge of the coordination of such liaison points.</del></p>

### Reason

Article 88 should be kept, but without the reference to the new oversight bodies. The aim of the reform is precisely to remove superfluous documentation requirements, and not to create new red tape.

Brussels, 9 October 2012.

*The President  
of the Committee of the Regions*  
Ramón Luis VALCÁRCEL SISO