



**2012/0060(COD)**

29.6.2017

# **AMENDMENTS**

## **15 - 75**

**Draft opinion**

**Ivan Štefanec**

(PE605.925v01-00)

Access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries

Proposal for a regulation

(COM(2016)0034 – C8-0018/2016 – 2012/0060(COD))



**Amendment 15**  
**Dita Charanzová**

**Proposal for a regulation**

—

*Proposal for rejection*

*The Committee on Internal Market and Consumer Protection calls on the Committee on International Trade, as the committee responsible, to propose rejection of the amended proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.*

Or. en

*Justification*

*This proposal does not do enough to address the issues raised in relations to the Commission's first proposal. As it is still not possible to address these issues through individual amendments, the only answer would be to either reject or have the Commission withdraw the amended proposal.*

**Amendment 16**  
**Emma McClarkin**

**Proposal for a regulation**

—

*Proposal for rejection*

*The Committee on Internal Market calls on the Committee on International Trade, as the committee responsible, to propose rejection of the amended proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement*

*and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.*

Or. en

**Amendment 17**  
**Jiří Maštálka**

**Proposal for a regulation**  
**Recital 1**

*Text proposed by the Commission*

(1) In accordance with Article 21 of the Treaty on European Union, the Union *is to* define and pursue common policies and actions, and improve cooperation in all fields in international relations in order, inter alia, to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.

*Amendment*

(1) In accordance with Article 21 of the Treaty on European Union, the Union *should seek to develop relations and build partnerships with third countries, and international, regional or global organizations which share the principles referred to in the first subparagraph of that article, and the Union should* define and pursue common policies and actions, and improve cooperation in all fields in international relations in order, inter alia, to *help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development, to* encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade, *and to promote an international system based on stronger multilateral cooperation and good global governance.*

Or. en

**Amendment 18**  
**Mylène Troszczynski**

**Proposal for a regulation**  
**Recital 1**

*Text proposed by the Commission*

(1) In accordance with Article 21 of the Treaty on European Union, the Union is to define and pursue common policies and actions, and improve cooperation in all fields in international relations ***in order, inter alia, to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.***

*Amendment*

(1) In accordance with Article 21 of the Treaty on European Union, the Union is to define and pursue common policies and actions, and improve cooperation in all fields in international relations.

Or. fr

**Amendment 19**  
**Maria Grapini, Lucy Anderson, Marlene Mizzi, Arndt Kohn**

**Proposal for a regulation**  
**Recital 1**

*Text proposed by the Commission*

(1) In accordance with Article 21 of the Treaty on European Union, the Union is to define and pursue common policies and actions, and improve cooperation in all fields in international relations in order, inter alia, to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.

*Amendment*

(1) In accordance with Article 21 of the Treaty on European Union, the Union is to define and pursue common policies and actions, and improve cooperation in all fields in international relations in order, inter alia, to encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade, ***but respecting environmental, social and product standards in the internal market.***

Or. en

**Amendment 20**  
**Mylène Troszczynski**

**Proposal for a regulation**  
**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) A ‘Buy European Act’ urgently needs to be introduced to give European businesses priority access to European public procurement.***

Or. fr

## **Amendment 21**

**Mylène Troszczynski**

### **Proposal for a regulation**

#### **Recital 2**

*Text proposed by the Commission*

*Amendment*

***(2) Pursuant to Article 206 of the Treaty on the Functioning of the European Union, (TFEU) the Union, by establishing a customs union, is to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.***

***deleted***

Or. fr

## **Amendment 22**

**Mylène Troszczynski**

### **Proposal for a regulation**

#### **Recital 3**

*Text proposed by the Commission*

*Amendment*

***(3) In accordance with Article 26 of the Treaty on the Functioning of the European Union TFEU the Union is to adopt measures with the aim of establishing or ensuring the functioning of the internal market, comprising an***

***deleted***

*area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.*

Or. fr

#### **Amendment 23**

**Maria Grapini, Lucy Anderson, Marlene Mizzi, Arndt Kohn**

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

##### **Recital 6**

*Text proposed by the Commission*

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

*Amendment*

(6) Within the context of the WTO and through its bilateral relations, the Union advocates an ambitious opening of international public procurement ***and concessions*** markets of the Union and its trading partners, in a spirit of reciprocity and mutual benefit, ***based on fair trade***.

Or. en

#### **Amendment 24**

**Maria Grapini, Lucy Anderson, Arndt Kohn**

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

##### **Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) In order to avoid confusion about the concession of goods, it is necessary to introduce a definition of the term “concession”.***

Or. en

#### **Amendment 25**

**Mylène Troszczynski**

**Proposal for a regulation**  
**Recital 7**

*Text proposed by the Commission*

(7) If the country concerned is a Party to the WTO Agreement on Government Procurement or has concluded a trade agreement with the EU that includes provisions on public procurement, the Commission should follow the consultation mechanisms ***and/or dispute settlement procedures*** set out in that agreement when the restrictive practices relate to procurement covered by market access commitments undertaken by the country concerned towards the Union.

*Amendment*

(7) If the country concerned is a Party to the WTO Agreement on Government Procurement or has concluded a trade agreement with the EU that includes provisions on public procurement, the Commission should follow the consultation mechanisms set out in that agreement when the restrictive practices relate to procurement covered by market access commitments undertaken by the country concerned towards the Union.

Or. fr

**Amendment 26**  
**Pascal Durand**

**Proposal for a regulation**  
**Recital 8**

*Text proposed by the Commission*

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

*Amendment*

(8) Many third countries are reluctant to open their public procurement and their concessions markets to international competition, or to open those markets further than what they have already done. As a result, Union economic operators face restrictive procurement practices in many of the trading ***partners*** of the Union. ***In addition, a number of third countries have not ratified or are not implementing some of the international social and environmental conventions referred to in Article 18(2) of, and Annex X to, Directive 2004/24/EU of the European Parliament and of the Council<sup>1a</sup>, which is tantamount to a restrictive practice since Union economic operators are bound by those conventions, including when responding***



*to an invitation to tender in a third country.* Those restrictive procurement practices result in the loss of substantial trading opportunities.

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*<sup>1a</sup>Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).*

Or. fr

**Amendment 27**  
**Jiří Maštálka**

**Proposal for a regulation**  
**Recital 8**

*Text proposed by the Commission*

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

*Amendment*

(8) Many third countries are reluctant to open their public procurement and their concessions markets to international competition, or to open those markets further than what they have already done, ***because they consider public procurement as an important instrument to address development needs of their population, in particular in rural areas.*** As a result, Union economic operators face restrictive procurement practices in many of the trading partner of the Union. Those restrictive procurement practices result in the loss of substantial trading opportunities.

Or. en

**Amendment 28**  
**Maria Grapini, Lucy Anderson, Arndt Kohn**

**Proposal for a regulation**  
**Recital 8**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 29**

**Mylène Troszczynski**

**Proposal for a regulation**

**Recital 8**

*Text proposed by the Commission*

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

*Amendment*

(8) Many third countries are reluctant to open their public procurement and their concessions markets to international competition, or to open those markets further than what they have already done. As a result, Union economic operators face restrictive procurement practices in many of the trading partner of the Union. Those restrictive procurement practices ***are lawful and are strategic, sovereign choices made by the countries concerned.***

Or. fr

**Amendment 30**

**Mylène Troszczynski**

**Proposal for a regulation**  
**Recital 9**

*Text proposed by the Commission*

(9) Directive 2004/25/EU of the European Parliament and of the Council<sup>16</sup> contains only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 85 and 86. ***These provisions have a limited scope and should be replaced.***

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<sup>16</sup>Directive 2004/25/EU of the European Parliament and of the Council, of 26 February 2004 on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 94, 28.3.2004, p. 243).

*Amendment*

(9) Directive 2004/25/EU of the European Parliament and of the Council<sup>16</sup> contains only a few provisions concerning the external dimension of the public procurement policy of the Union, in particular Articles 85 and 86.

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<sup>16</sup>Directive 2004/25/EU of the European Parliament and of the Council, of 26 February 2004 on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 94, 28.3.2004, p. 243).

Or. fr

**Amendment 31**  
**Maria Grapini, Lucy Anderson, Arndt Kohn**

**Proposal for a regulation**  
**Recital 11**

*Text proposed by the Commission*

(11) In the interest of legal certainty for Union and third-country economic operators, contracting authorities and contracting entities, the international market access commitments undertaken by the Union towards third countries in the field of public procurement and concessions should be reflected in the legal order of the EU, thereby ensuring effective application thereof.

*Amendment*

(11) In the interest of legal certainty for Union and third-country economic operators ***and consumers***, contracting authorities and contracting entities, the international market access commitments undertaken by the Union towards third countries in the field of public procurement and concessions should be reflected in the legal order of the EU, thereby ensuring effective application thereof.

Or. en

**Amendment 32**  
**Maria Grapini, Lucy Anderson**

**Proposal for a regulation**  
**Recital 12**

*Text proposed by the Commission*

(12) The objectives of improving the access of Union economic operators to the public procurement and concessions markets of certain third countries protected by restrictive and discriminatory procurement measures or practices and of preserving equal conditions of competition within the internal market require to refer to the non-preferential rules of origin established in the EU customs legislation, so that contracting authorities and contracting entities know whether goods and services are covered by the international commitments of the Union.

*Amendment*

(12) The objectives of improving the access of Union economic operators to the public procurement and concessions markets of certain third countries protected by restrictive and discriminatory procurement **and concessions** measures or practices and of preserving equal conditions of competition within the internal market require to refer to the non-preferential rules of origin established in the EU customs legislation, so that contracting authorities and contracting entities know whether goods and services are covered by the international commitments of the Union.

Or. en

**Amendment 33**  
**Mylène Troszczynski**

**Proposal for a regulation**  
**Recital 12**

*Text proposed by the Commission*

(12) The objectives of improving the access of Union economic operators to the public procurement and concessions markets of certain third countries protected by **restrictive and discriminatory** procurement measures or practices and of preserving equal conditions of competition within the internal market require to refer to the non-preferential rules of origin established in the EU customs legislation, so that contracting authorities and contracting entities know whether goods and services are covered by the

*Amendment*

(12) The objectives of improving the access of Union economic operators to the public procurement and concessions markets of certain third countries protected by **specific** procurement measures or practices and of preserving equal conditions of competition within the internal market require to refer to the non-preferential rules of origin established in the EU customs legislation, so that contracting authorities and contracting entities know whether goods and services are covered by the international

international commitments of the Union.

commitments of the Union.

Or. fr

## **Amendment 34**

**Richard Sulík**

### **Proposal for a regulation**

#### **Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) The Commission may take measures on the basis of this regulation only in exceptional circumstances and with regard to countries the EU has not recognised as a market economy.***

Or. sk

#### *Justification*

*Krajiny, ktoré EÚ uznáva ako trhové ekonomiky, by mali byť súčasťou férovej hospodárskej súťaže na jednotnom trhu, nakoľko súťaž vedie ku kvalitnejším tovarom a službám za nižšie ceny poskytovaných európskemu spotrebiteľovi. V prípade, že by mali byť tovary a služby pochádzajúce z krajín so statusom trhovej ekonomiky obmedzené v prístupe do verejného obstarávania v členských štátoch, stráca udeľovanie tohto statusu zo strany EÚ čiastočne zmysel. Akékoľvek znevýhodnenie kandidátov z tretích krajín v uchádzaní sa o verejné zákazky treba obmedziť len na výnimočné prípady, keďže náklady tohto znevýhodnenia bude niest' v prvom rade európsky daňový poplatník prostredníctvom vyššej ceny za obstarávané tovary a služby.*

## **Amendment 35**

**Richard Sulík**

### **Proposal for a regulation**

#### **Recital 12 b (new)**

*Text proposed by the Commission*

*Amendment*

***(12b) The Commission can take the action provided for in this regulation only in cases involving restrictive and discriminatory measures, or in proceedings relating to procurement or a***

*market in which a third country is applying concessions which seriously harm, or have the potential to seriously harm, the economic sector of a Member State, while that third country is demonstrably subsidising its own export capacity.*

Or. sk

#### *Justification*

*Akékoľvek reštriktívne opatrenia prístupu na trh verejného obstarávania a trh s koncesiami EÚ z tretích krajín vedie k poškodeniu európskeho spotrebiteľa, ktorý prostredníctvom daní zaplatí drahšie obstarávanie s menšou ponukou. Reštriktívne opatrenia v konečnom dôsledku zhoršujú aj konkurencieschopnosť európskych exportérov, ktorí namiesto zvyšovania efektivity a inovatívnych postupov hľadajú odstránenie konkurenčného tlaku prostredníctvom ochranných opatrení, ktorých náklady v konečnom dôsledku platí európsky spotrebiteľ. Akékoľvek reštriktívne opatrenia by preto mali byť len dočasné a týkať sa len tých reštriktívnych a diskriminačných opatrení, ktoré závažne poškodzujú alebo môžu závažne poškodiť odvetvie hospodárstva členských krajín, a to pokiaľ sú zasiahnuté neférovou konkurenciou dotknutej tretej krajiny vo forme exportných dotácií tretej krajiny s cieľom umelého zvýhodnenia voči jeho zahraničným konkurentom.*

#### **Amendment 36** **Richard Sulík**

#### **Proposal for a regulation** **Recital 13**

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

(13) The origin of a good should be determined in accordance with **Article 22 to 26 of Council Regulation (EEC) No 2913/1992**<sup>18</sup>,

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<sup>18</sup>**Council Regulation (EEC) No 2913/1992 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).**

##### *Amendment*

(13) The origin of a good should be determined in accordance with **Articles 59 to 63 of Regulation (EU) No 952/2013 of the European Parliament and of the Council**<sup>18</sup>,

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<sup>18</sup>**Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).**

Or. sk

## Amendment 37

Maria Grapini, Marlene Mizzi, Lucy Anderson

### Proposal for a regulation

#### Recital 17

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

(17) When assessing whether restrictive and/or discriminatory procurement measures or practices exist in a third country, the Commission should examine to what degree laws on public procurement and concessions of the country concerned ensure transparency in line with international standards in the field of public procurement and preclude any discrimination against Union goods, services and economic operators. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

##### *Amendment*

(17) When assessing whether restrictive and/or discriminatory procurement measures or practices exist in a third country, the Commission should examine to what degree laws on public procurement and concessions of the country concerned ensure transparency **and confidentiality** in line with international standards in the field of public procurement **and concessions** and preclude any discrimination against Union goods, services and economic operators. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Or. en

## Amendment 38

Jiří Maštálka

### Proposal for a regulation

#### Recital 17

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

(17) When assessing **whether restrictive and/or discriminatory procurement measures or practices exist in a third country**, the Commission should examine to what degree laws on public procurement and concessions of the country concerned ensure transparency in line with international standards in the field of public procurement and preclude any

##### *Amendment*

(17) When assessing **the legitimacy of applied public procurement restrictions**, the Commission should examine to what degree laws on public procurement and concessions of the country concerned ensure transparency in line with international standards in the field of public procurement and preclude any discrimination **particularly** against Union

discrimination against Union goods, services and economic operators. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

goods, services and economic operators. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt discriminatory practices ***considered illegitimate*** against Union goods, services and economic operators.

Or. en

## **Amendment 39**

**Richard Sulík**

### **Proposal for a regulation**

#### **Recital 17**

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

(17) When assessing whether restrictive and/or discriminatory procurement measures or practices exist in a third country, the Commission ***should*** examine to what degree laws on public procurement and concessions of the country concerned ensure transparency in line with international standards in the field of public procurement and preclude any discrimination against Union goods, services and economic operators. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

##### *Amendment*

(17) When assessing whether restrictive and/or discriminatory procurement measures or practices exist in a third country, the Commission ***shall*** examine to what degree laws on public procurement and concessions of the country concerned ensure transparency in line with international standards in the field of public procurement and preclude any discrimination against Union goods, services and economic operators. In addition, it should examine to what degree individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Or. sk

## **Amendment 40**

**Emma McClarkin, Dita Charanzová**

### **Proposal for a regulation**

#### **Recital 18**



*Text proposed by the Commission*

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

*Amendment*

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common commercial policy, Member States and their contracting authorities and contracting entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than those provided for in this Regulation. ***Notwithstanding, the Member States should be able to provide for the use of the competitive procedure with negotiation or the competitive dialogue in various situations where the classic open or restricted procedures without negotiations are unlikely to deliver satisfactory outcomes.***

Or. en

**Amendment 41**

**Maria Grapini, Lucy Anderson, Arndt Kohn**

**Proposal for a regulation**

**Recital 18**

*Text proposed by the Commission*

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

*Amendment*

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common commercial policy, Member States and their contracting authorities and contracting entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than those provided for in this Regulation, ***if the goods or services comply with the quality and environmental standards imposed on products and services in the internal market.***

**Amendment 42****Jiří Maštálka****Proposal for a regulation****Recital 18***Text proposed by the Commission*

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

*Amendment*

(18) In view of the fact that the access of third country goods and services to the public procurement market of the Union falls within the scope of the common commercial policy, Member States and their contracting authorities and contracting entities should not be able to restrict the access of third country goods or services to their tendering procedures by any other measure than those provided **in Directive 2014/24/EU of the European Parliament and of the Council<sup>1a</sup> and related directives, or other respective provisions established in accordance with the treaties**.

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<sup>1a</sup> **Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).**

**Amendment 43****Mylène Troszczynski****Proposal for a regulation****Recital 18***Text proposed by the Commission*

(18) In view of the fact that the access of third country goods and services to the

*Amendment*

(18) In view of the fact that the access of third country goods and services to the

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

public procurement market of the Union falls within the scope of the common commercial policy, Member States and or their contracting authorities and contracting entities should ***have the capacity*** to restrict the access of third country goods or services to their tendering procedures by any ***measures considered strategic and in the best interests of the Member State.***

Or. fr

#### **Amendment 44**

**Mylène Troszczynski**

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

##### **Recital 19**

*Text proposed by the Commission*

*(19) The Commission should be able, on its own initiative or at the application of interested parties or a Member State, to initiate at any time an investigation into restrictive procurement measures or practices allegedly adopted or maintained by a third country. Such investigative procedures should be without prejudice to Regulation (EU) No 654/2014 of the European Parliament and of the Council.*

*Amendment*

*deleted*

Or. fr

#### **Amendment 45**

**Jiří Maštálka**

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

##### **Recital 19**

*Text proposed by the Commission*

(19) The Commission should be able, on its own initiative or at the application of interested parties or a Member State, to

*Amendment*

(19) The Commission should be able, on its own initiative or at the application of interested parties or a Member State, to

initiate at any time an investigation into restrictive procurement measures or practices allegedly adopted or maintained by a third country. . Such investigative procedures should be without prejudice to Regulation (EU) No 654/2014 of the European Parliament and of the Council.

initiate at any time an investigation into ***illegitimate*** restrictive procurement measures or practices allegedly adopted or maintained by a third country. . Such investigative procedures should be without prejudice to Regulation (EU) No 654/2014 of the European Parliament and of the Council.

Or. en

#### **Amendment 46**

**Mylène Troszczynski**

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

##### **Recital 20**

*Text proposed by the Commission*

***(20) If the existence of a restrictive and/or discriminatory procurement measure or practice in a third country is confirmed, the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for Union economic operators, goods and services in respect of public procurement in that country.***

*Amendment*

***deleted***

Or. fr

#### **Amendment 47**

**Maria Grapini, Lucy Anderson**

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

##### **Recital 20**

*Text proposed by the Commission*

**(20) If the existence of a restrictive and/or discriminatory procurement measure or practice in a third country is confirmed, the Commission should invite the country concerned to enter into**

*Amendment*

**(20) If the existence of a restrictive and/or discriminatory procurement *and concessions*' measure or practice in a third country is confirmed, the Commission should invite the country concerned to**

consultations with a view to improving the tendering opportunities for Union economic operators, goods and services in respect of public procurement in that country.

enter into consultations, ***in a short time***, with a view to improving the tendering opportunities for Union economic operators, goods and services in respect of public procurement in that country, ***in order to increase the potential for internationalization of EU businesses***.

Or. en

## Amendment 48

Jiří Maštálka

### Proposal for a regulation

#### Recital 20

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

(20) If the existence of ***a*** restrictive and/or discriminatory procurement measure or practice in a third country is confirmed, the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for Union economic operators, goods and services in respect of public procurement in that country.

##### *Amendment*

(20) If the existence of ***an illegitimate*** restrictive and/or discriminatory procurement measure or practice in a third country is confirmed, the Commission should invite the country concerned to enter into consultations with a view to improving the tendering opportunities for Union economic operators, goods and services in respect of public procurement in that country.

Or. en

## Amendment 49

Richard Sulík

### Proposal for a regulation

#### Recital 20

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

(20) If the existence of a restrictive and/or discriminatory procurement measure or practice in a third country is confirmed, the Commission ***should*** invite the country concerned to enter into consultations with a view to improving the

##### *Amendment*

(20) If the existence of a restrictive and/or discriminatory procurement measure or practice in a third country is confirmed, the Commission ***shall*** invite the country concerned to enter into consultations with a view to improving the

tendering opportunities for Union economic operators, goods and services in respect of public procurement in that country.

tendering opportunities for Union economic operators, goods and services in respect of public procurement in that country.

Or. sk

**Amendment 50**  
**Richard Sulík**

**Proposal for a regulation**  
**Recital 21**

*Text proposed by the Commission*

(21) It is of the utmost importance that the investigation is carried out in a transparent manner. A report on the *main* findings of the investigation should therefore be publicly available.

*Amendment*

(21) It is of the utmost importance that the investigation is carried out in a transparent manner. A report on the findings of the investigation, *whilst maintaining the confidentiality of trade secrets and other sensitive information*, should therefore be publicly available.

Or. sk

**Amendment 51**  
**Maria Grapini, Lucy Anderson**

**Proposal for a regulation**  
**Recital 21**

*Text proposed by the Commission*

(21) It is of the utmost importance that the investigation is carried out in a transparent manner. A report on the main findings of the investigation should therefore be publicly available.

*Amendment*

(21) It is of the utmost importance that the investigation is carried out in a transparent manner. A report on the main findings *and conclusions* of the investigation should therefore be publicly available.

Or. en

**Amendment 52**  
**Richard Sulík**

**Proposal for a regulation**  
**Recital 22**

*Text proposed by the Commission*

(22) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, the Commission should be able to adopt, where appropriate, price adjustment measures applying to tenders submitted by economic operators ***originating in that country and/or including goods and services originating in that country.***

*Amendment*

(22) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, the Commission should be able to adopt, where appropriate, price adjustment measures applying to tenders ***for goods or services originating in that country, or*** submitted by economic operators ***from the third country concerned or economic actors from any other country.***

Or. sk

*Justification*

*Under this draft regulation, the price adjustments are not connected with a particular category of economic actor, but with a particular category of goods and services (when at least 50% of the goods or services come from the third country concerned, for example), and so it is not relevant whether the economic actor offering those services comes from the third country concerned or elsewhere. The reference to the economic actor offering the goods/services is therefore redundant.*

**Amendment 53**  
**Richard Sulík**

**Proposal for a regulation**  
**Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) Price adjustment is a sanction measure applied by Member States, on the basis of a Commission decision, to the provision of goods and services from a third country in Member State procurement processes, in response to a***

*restrictive and discriminatory measure adopted or applied by that third country against economic actors, goods or services from the EU in public procurement, and consists of a set rise in the cost of the provision of those goods and services.*

Or. sk

**Amendment 54**  
**Maria Grapini, Lucy Anderson**

**Proposal for a regulation**  
**Recital 24**

*Text proposed by the Commission*

(24) Price adjustment measures should not have a negative impact on on-going trade negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement, the Commission may suspend the measures during the negotiations.

*Amendment*

(24) Price adjustment measures should not have a negative impact on on-going trade negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement, the Commission may suspend the measures during the negotiations. ***It is necessary to define the “price adjustment” for a uniform interpretation of the provisions of this Regulation.***

Or. en

**Amendment 55**  
**Jiří Pospíšil**

**Proposal for a regulation**  
**Recital 24**

*Text proposed by the Commission*

(24) Price adjustment measures should not have a negative impact on on-going trade negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with

*Amendment*

*(Does not affect the English version.)*



the Union concerning market access in the field of public procurement, the Commission may suspend the measures during the negotiations.

Or. cs

**Amendment 56**  
**Richard Sulík**

**Proposal for a regulation**  
**Recital 26**

*Text proposed by the Commission*

(26) Member States are best placed to identify the contracting authorities or contracting entities, or categories of contracting authorities or contracting entities, which should apply the price adjustment measure. ***To ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved, the Commission should take the final decision, based on a list submitted by each Member State.*** Where necessary, the Commission may establish a list on its own initiative.

*Amendment*

(26) ***Given that the*** Member States are best placed to identify the contracting authorities or contracting entities, or categories of contracting authorities or contracting entities, which should apply the price adjustment measure, ***they shall send a proposed list of those entities to the Commission. The Commission shall draw up a final list of contracting authorities or contracting entities, or categories of contracting authorities or contracting entities in each Member State, whose contracts the measure applies to. The Commission shall take the final decision on the content of the list of contracting authorities or contracting entities which should apply the price adjustment measure.*** Where necessary, the Commission may establish a list on its own initiative.

Or. sk

**Amendment 57**  
**Maria Grapini, Lucy Anderson**

**Proposal for a regulation**  
**Recital 26**

*Text proposed by the Commission*

(26) Member States are best placed to

*Amendment*

(26) Member States are best placed to

identify the contracting authorities or contracting entities, or categories of contracting authorities or contracting entities, which should apply the price adjustment measure. To ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved, the Commission should take the final decision, based on a list submitted by each Member State. *Where necessary, the Commission may establish a list on its own initiative.*

identify the contracting authorities or contracting entities, or categories of contracting authorities or contracting entities, which should apply the price adjustment measure. To ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved, the Commission should take the final decision, based on a list submitted by each Member State *and based on the discussion with the Member State concerned.*

Or. en

**Amendment 58**  
**Emma McClarkin, Dita Charanzová**

**Proposal for a regulation**  
**Recital 27**

*Text proposed by the Commission*

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, or where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

*Amendment*

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price *and offering the best value for money.* Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, or where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

Or. en

**Amendment 59**  
**Maria Grapini, Lucy Anderson, Arndt Kohn**

**Proposal for a regulation**  
**Recital 27**

*Text proposed by the Commission*

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, or where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

*Amendment*

(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products **and services** meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, or where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.

Or. en

**Amendment 60**  
**Richard Sulík**

**Proposal for a regulation**  
**Recital 28**

*Text proposed by the Commission*

(28) In case of misapplication by contracting authorities or contracting entities of exceptions to price adjustment measures limiting access of non-covered goods and services, the Commission should be able to apply the corrective mechanism of Article 3 of Council Directive 89/665/EEC<sup>20</sup> or Article 8 of Council Directive 92/13/EEC<sup>21</sup>. In addition, contracts concluded with an

*Amendment*

(28) *(Does not affect the English version.)*

economic operator by contracting  
authorities or contracting entities in  
violation of price adjustment measures  
limiting access of non-covered goods and  
services should be ineffective.

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<sup>20</sup>Council Directive 89/665/EEC on the  
coordination of the laws, regulations and  
administrative provisions relating to the  
application of review procedures to the  
award of public supply and public works  
contracts (OJ L 395, 30.12.1989, p. 33).

<sup>21</sup>Council Directive 92/13/EEC  
coordinating the laws, regulations and  
administrative provisions relating to the  
application of Community rules on the  
procurement procedures of entities  
operating in the water, energy, transport  
and telecommunications sectors (OJ L 76,  
23.3.1992, p. 14).

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<sup>20</sup>Council Directive 89/665/EEC on the  
coordination of the laws, regulations and  
administrative provisions relating to the  
application of review procedures to the  
award of public supply and public works  
contracts (OJ L 395, 30.12.1989, p. 33).

<sup>21</sup>Council Directive 92/13/EEC  
coordinating the laws, regulations and  
administrative provisions relating to the  
application of Community rules on the  
procurement procedures of entities  
operating in the water, energy, transport  
and telecommunications sectors (OJ L 76,  
23.3.1992, p. 14).

Or. sk

#### *Justification*

*This amendment is relevant only for a Slovak translation. See paragraph 28 of the recital and Article 13(2). The English version works with a term "ineffective" in both para 28 of recital and Article 13(2). The Slovak translation, however, uses the word "neplatný" ("invalid") in para 28 and "neúčinný" ("ineffective") in Article 13(2). The legal consequences of both terms are very different.*

#### **Amendment 61**

**Emma McClarkin, Dita Charanzová**

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

##### **Recital 29**

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

(29) In order to ensure uniform  
conditions for the implementation of this  
Regulation, implementing powers should  
be conferred on the Commission. Those  
powers should be exercised in accordance  
with Regulation (EU) No 182/2011 of the

###### *Amendment*

(29) In order to ensure uniform  
conditions for the implementation of this  
Regulation, implementing powers should  
be conferred on the Commission. Those  
powers should be exercised in accordance  
with Regulation (EU) No 182/2011 of the  
European Parliament and of the Council<sup>22</sup>.

European Parliament and of the Council<sup>22</sup> .

***In the same purpose, all the European Institutions should take into account the changes effected by this Regulation and adjust their own procurement rules accordingly to reflect these changes.***

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<sup>22</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for the control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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<sup>22</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for the control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Or. en

**Amendment 62**  
**Maria Grapini, Lucy Anderson**

**Proposal for a regulation**  
**Recital 30 a (new)**

*Text proposed by the Commission*

*Amendment*

***(30a) It is necessary to introduce transitional provisions on negotiation without publication of a notice where contracts awarded under Directive 2004/17/EC and/or Directive 2004/18/EC are amended.***

Or. en

**Amendment 63**  
**Mylène Troszczynski**

**Proposal for a regulation**  
**Recital 33**

*Text proposed by the Commission*

*Amendment*

(33) In accordance with the principle of proportionality, it ***is necessary and***

(33) In accordance with the principle of proportionality, it ***would be*** appropriate to

appropriate *for achievement of the basic objective of establishing a common external policy in the field of public procurement* to lay down common rules on the treatment of tenders which include goods and services not covered by the international commitments of the European Union. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the fourth paragraph of Article 5 of the Treaty on European Union,

lay down common rules on the treatment of tenders which include goods and services not covered by the international commitments of the European Union. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the fourth paragraph of Article 5 of the Treaty on European Union,

Or. fr

**Amendment 64**  
**Maria Grapini, Lucy Anderson**

**Proposal for a regulation**  
**Article 2 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) ‘economic operator’ means any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which submits a tender for the execution of works and/or a work, the supply of goods or the provision of services on the market;

*Amendment*

(a) ‘economic operator’ means any natural or legal person, *any works contractor, service provider, product supplier* or public entity or group of such persons and/or entities, including any temporary association of undertakings, which submits a tender for the execution of works and/or a work, the supply of goods or the provision of services on the market;

Or. en

**Amendment 65**  
**Pascal Durand**

**Proposal for a regulation**  
**Article 2 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) ‘restrictive and/or discriminatory procurement measure or practice’ means

*Amendment*

(f) ‘restrictive and/or discriminatory procurement measure or practice’ means

any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a serious and recurrent impairment of access of Union goods, services and/or economic operators to the public procurement or concession market of that country.

any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a serious and recurrent impairment of access of Union goods, services and/or economic operators to the public procurement or concession market of that country ***or which result from the non-ratification or non-implementation by a third country of the international social and environmental conventions referred to in Article 18(2) of, and Annex X to, Directive 2014/24/EU;***

Or. fr

## Amendment 66

Mylène Troszczynski

### Proposal for a regulation

#### Article 2 – paragraph 1 – point f

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

(f) ***‘restrictive and/or discriminatory*** procurement measure or practice’ means any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a ***serious and recurrent*** impairment of access of Union goods, services and/or economic operators to the public procurement or concession market of that country.

##### *Amendment*

(f) ***‘protective and/or restrictive*** procurement measure or practice’ means any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a ***voluntary (temporary or lengthy)*** impairment of access of Union goods, services and/or economic operators to the public procurement or concession market of that country, ***with the aim of promoting its own undertakings in specific economic sectors or with the sovereign aim of ensuring its independence;***

*(This amendment to the definition applies throughout the text. Adopting it will*

*necessitate corresponding changes throughout.)*

Or. fr

**Amendment 67**  
**Mylène Troszczynski**

**Proposal for a regulation**  
**Article 2 – paragraph 1 – point g**

*Text proposed by the Commission*

(g) ‘country’ means any State or separate customs territory, *without such term having implications for sovereignty*;

*Amendment*

(g) ‘country’ means any State or separate customs territory;

Or. fr

**Amendment 68**  
**Richard Sulík**

**Proposal for a regulation**  
**Article 2 – paragraph 1 – point h a (new)**

*Text proposed by the Commission*

*Amendment*

*(ha) ‘price restriction’ means a sanction imposed by the Commission in response to a restrictive and/or discriminatory measure taken by a third country, and consists of an increase in the cost of the provision of goods and services from the third country concerned, to the extent and under the conditions set out under this Regulation;*

Or. sk

**Amendment 69**  
**Emma McClarkin, Dita Charanzová**

**Proposal for a regulation**  
**Article 9 – paragraph 1**



*Text proposed by the Commission*

The Commission shall determine the contracting authorities or entities or categories of contracting authorities or entities, listed by Member State, whose procurement is concerned by the measure. To provide the basis for this determination, each Member State shall submit a list of appropriate contracting authorities or entities or categories of contracting authorities or entities. The Commission shall ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved.

*Amendment*

The Commission shall determine the contracting authorities or entities or categories of contracting authorities or entities, listed by Member State, whose procurement is concerned by the measure. To provide the basis for this determination, each Member State shall submit a list of appropriate contracting authorities or entities or categories of contracting authorities or entities. ***This list can be updated by the Member States in case of necessity.*** The Commission shall ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved.

Or. en

**Amendment 70**  
**Richard Sulík**

**Proposal for a regulation**  
**Article 9 – paragraph 1**

*Text proposed by the Commission*

**The** Commission shall determine the contracting authorities or entities or categories of contracting authorities or entities, listed by Member State, whose procurement is concerned by the measure. To provide the basis for this determination, each Member State shall submit a list of appropriate contracting authorities or entities or categories of contracting authorities or entities. The Commission shall ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved.

*Amendment*

***By [six months from the date this Regulation enters into force] at the latest, the*** Commission shall determine the contracting authorities or entities or categories of contracting authorities or entities, listed by Member State, whose procurement is concerned by the measure. To provide the basis for this determination, each Member State shall submit a list of appropriate contracting authorities or entities or categories of contracting authorities or entities. The Commission shall ensure that an appropriate level of action is taken and that a fair distribution of the burden among Member States is achieved.

Or. sk

**Amendment 71**  
**Richard Sulík**

**Proposal for a regulation**  
**Article 11 – paragraph 2**

*Text proposed by the Commission*

2. When contracting authorities and contracting entities conduct a procurement or a concession procedure that is subject to a price adjustment measure, they shall include that information in the contract notice they publish pursuant to Article 49 of Directive 2014/24/EU or Article 69 of Directive 2014/25/EU or in the concession notice they publish pursuant to Article 31 of Directive 2014/23/EU. The Commission may adopt implementing acts in accordance with the advisory procedure referred to in Article 14(3) adapting the standard forms for contract or concession notices adopted under Directives 2014/23/EU, 2014/24/EU, and 2014/25/EU.

*Amendment*

2. When contracting authorities and contracting entities conduct a procurement or a concession procedure that is subject to a price adjustment measure, they shall, ***no later than one month after the start of the procedure***, include that information in the contract notice they publish pursuant to Article 49 of Directive 2014/24/EU or Article 69 of Directive 2014/25/EU or in the concession notice they publish pursuant to Article 31 of Directive 2014/23/EU. The Commission may adopt implementing acts in accordance with the advisory procedure referred to in Article 14(3) adapting the standard forms for contract or concession notices adopted under Directives 2014/23/EU, 2014/24/EU, and 2014/25/EU.

Or. sk

**Amendment 72**  
**Emma McClarkin**

**Proposal for a regulation**  
**Article 12 – paragraph 1 – point a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) they conclude that not applying the price adjustment measure would be in their best interest;***

Or. en

**Amendment 73**  
**Jiří Maštálka**

**Proposal for a regulation**  
**Article 12 – paragraph 3 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

**(ca) information regarding environmental, labour and wage conditions involved in the offer, in order to prevent social or environmental dumping;**

Or. en

**Amendment 74**  
**Emma McClarkin**

**Proposal for a regulation**  
**Article 13 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Contracts concluded with an economic operator in violation of price adjustment measures adopted or reinstated by the Commission pursuant to this Regulation shall be ineffective.

2. Contracts concluded with an economic operator in violation of price adjustment measures adopted or reinstated by the Commission pursuant to this Regulation ***can be, at the request of both contracting parties, examined by an international commercial arbitration court, permanent or ad hoc, which then shall have exclusive competencies to declare a contract effective or ineffective. If the contracting parties, however, decide not to bring the case to an international commercial arbitration court, a contract concluded in violation of this Regulation shall be ineffective.***

Or. en

**Amendment 75**  
**Emma McClarkin**

**Proposal for a regulation**  
**Article 16 – paragraph 1 a (new)**

***Member States shall ensure that the application of this Regulation is monitored with a view to detecting threats to the financial interests of the Union and its Member States, to the unity of the single market and/or to the rights of the consumers. This monitoring shall be used to prevent, detect and adequately report possible instances of procurement fraud, corruption, conflict of interest and other serious irregularities. Where monitoring authorities or structures identify specific violations or systemic problems, they shall be empowered to refer those problems to national auditing authorities, courts or tribunals or other appropriate authorities or structures, such as the ombudsman, national Parliaments or committees thereof.***

Or. en