



2023/0081(COD)

20.9.2023

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Industry, Research and Energy

on the proposal for a regulation of the European Parliament and of the Council on establishing a framework of measures for strengthening Europe's net-zero technology products manufacturing ecosystem (Net Zero Industry Act) (COM(2023)0161 – C9-0062/2023 – 2023/0081(COD))

Rapporteur for opinion: Tom Vandenkendelaere(*) Associated committee – Rule 57 of the Rules of Procedure

PA_Legam

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to take the following into account:

Amendment 1

Proposal for a regulation

Recital 25

Text proposed by the Commission

(25) Directives 2014/23/EU, 2014/24/EU and 2014/25/EU already allow contracting authorities and entities awarding contracts through public procurement procedures to rely, in addition to price or cost, on additional criteria for identifying the most economically advantageous tender. Such criteria concern for instance the quality of the tender including social, environmental and innovative characteristics. When awarding contracts for net-zero technology through public procurement, contracting authorities and contracting entities should duly assess the tenders' contribution to sustainability and resilience in relation to a series of criteria relating to the tender's environmental sustainability, innovation, system integration and to resilience.

Amendment

(25) Directives 2014/23/EU, 2014/24/EU and 2014/25/EU already allow contracting authorities and entities awarding contracts through public procurement procedures to rely, in addition to price or cost, on additional **qualitative** criteria for identifying the most economically advantageous tender. Such criteria concern for instance the quality of the tender including social, environmental and innovative characteristics. When awarding contracts for **strategic** net-zero technology through public procurement, contracting authorities and contracting entities should duly assess the tenders' contribution to sustainability and resilience in relation to a series of criteria relating to the tender's environmental sustainability, innovation, system integration, and to resilience, **including energy security and security of supply. Contracting authorities and entities must ensure that procedures treat providers established in other Member States equally to national providers and to ensure non-discrimination when establishing criteria.**

Amendment 2

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) Social sustainability criteria can already be applied under existing legislation and can include working conditions and collective bargaining in line with the European Pillar of Social Rights in line with Articles, 30 (3) of Directive 2014/23/EU, 18 (2) of Directive 2014/24/EU and 36 (2) of Directive 2014/25/EU. Contracting authorities should contribute to social sustainability by taking the appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X of Directive 2014/23/EU, Annex X of Directive 2014/24/EU and Annex XIV of Directive 2014/25/EU⁴³.

⁴³ Commission Notice "Buying Social - a guide to taking account of social considerations in public procurement (2nd edition)", C(2021) 3573 final.

Amendment

(26) ***Environmental, social and labour*** sustainability criteria can already be applied under existing legislation and can include working conditions and collective bargaining in line with the European Pillar of Social Rights in line with Articles, 30 (3) of Directive 2014/23/EU, 18 (2) of Directive 2014/24/EU and 36 (2) of Directive 2014/25/EU. ***The application of the sustainability and resilience criteria are without prejudice to the obligation for*** contracting authorities should contribute to social sustainability by taking the appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X of Directive 2014/23/EU, Annex X of Directive 2014/24/EU and Annex XIV of Directive 2014/25/EU⁴³. ***The contribution to social sustainability is important to aim for decent working conditions, qualified apprenticeship programmes, equal pay for equal work, solid occupational health and safety as well as to ensure sufficient skilled labour both in short and long term.***

⁴³ Commission Notice "Buying Social - a guide to taking account of social considerations in public procurement (2nd edition)", C(2021) 3573 final.

Amendment 3

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) Without prejudice to Union legislation applicable to a specific technology, including under the Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products⁴⁴ and the Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries⁴⁵, and unless otherwise indicated therein, when evaluating the environmental sustainability of the net-zero solutions procured on the basis of this Regulation, contracting authorities and contracting entities may take into account various elements with an impact on the climate and the environment. These may include, for instance, the durability and reliability of the solution; the ease of repair and maintenance; the ease of upgrading and refurbishment; the ease and quality of recycling; the use of substances; the consumption of energy, water and other resources in one or more life cycle stages of the product; the weight and volume of the product and its packaging; the incorporation of used components; the quantity, characteristics and availability of consumables needed for proper use and maintenance; the environmental footprint of the product and its life cycle environmental impacts; the carbon footprint of the product; the microplastic release; emissions to air, water or soil released in one or more life cycle stages of the product; the amounts of waste generated; the conditions for use.

Amendment

(27) Without prejudice to Union legislation applicable to a specific technology, including under the Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products⁴⁴ and the Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries⁴⁵, and unless otherwise indicated therein, when evaluating the environmental sustainability of the net-zero solutions procured on the basis of this Regulation, contracting authorities and contracting entities may take into account various elements with an impact on the climate and the environment. ***Net-zero technologies with a limited environmental impact going beyond the minimum requirements in applicable national or Union legislation should be rewarded.*** These *elements* may include, for instance, the durability and reliability of the solution; the ease of repair and maintenance; the ease of upgrading and refurbishment; the ease and quality of recycling; the use of substances; the consumption of energy, water and other resources in one or more life cycle stages of the product; the weight and volume of the product and its packaging; the incorporation of used components; the quantity, characteristics and availability of consumables needed for proper use and maintenance; the environmental footprint of the product and its life cycle environmental impacts; the carbon footprint of the product; the microplastic release; emissions to air, water or soil released in one or more life cycle stages of the product; the amounts of waste generated; the conditions for use. ***When relevant product legislation and secondary legislation are setting green public procurement criteria those should be used as basis for the application of Art***

19.2 (a).

⁴⁴ Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, COM/2022/142 final, 30.03.2022.

⁴⁵ Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020, COM/2020/798 final, 10.12.2020.

⁴⁴ Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, COM/2022/142 final, 30.03.2022.

⁴⁵ Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020, COM/2020/798 final, 10.12.2020.

Amendment 4

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) For the purposes of taking into account within a public procurement procedure of the need to diversify sources of supply of net-zero technologies away from single sources of supply within the meaning of Article 19 (2), and without prejudice to the Union's international commitments, the supply should at least be deemed insufficiently diversified where a single source supplies for more than 65% of the demand for a specific net-zero technology within the Union.

Amendment

(28) For the purposes of taking into account within a public procurement procedure of the need to diversify sources of supply of net-zero technologies away from single sources of supply within the meaning of Article 19 (2), ***for setting up schemes benefitting households or consumers which incentivises the purchase of net-zero technology final products and key components***, and without prejudice to the Union's international commitments, the supply should at least be deemed insufficiently diversified where a single source supplies for more than 65% of the demand for a specific net-zero technology ***or the key components*** within the Union.

Amendment 5

Proposal for a regulation
Recital 28 a (new)

Text proposed by the Commission

Amendment

(28 a) The tender's contribution to sustainability and resilience are in no way to be used by contracting authorities or contracting entities to favour national suppliers over suppliers from other EU Member States. The resilience criteria should not lead to unfair competition or disturbance of the internal market. Therefore, the European Commission should closely monitor the proper functioning of the internal market to ensure a level playing field. If contracting authorities or contracting entities misuse these criteria, the Commission should consider all necessary steps against the Member State in question in order to ensure that these criteria apply equally across the Union.

Amendment 6

Proposal for a regulation
Recital 29

Text proposed by the Commission

Amendment

(29) For the purposes of setting up schemes benefitting households or consumers which incentivise the purchase of net-zero technology final products, and without prejudice to the Union's international commitments, the supply should be deemed insufficiently diversified where a single source supplies more than 65% of the total demand for a specific net-zero technology within the Union. To ensure a consistent application, the Commission should ***publish*** a yearly list starting on the date of application of this Regulation, of the distribution of the origin of net zero technology final products which fall under this category, broken

(29) To ensure a consistent application ***of the resilience criteria***, the Commission should ***adopt an implementing act providing a*** yearly list starting on the date of application of this Regulation, of the distribution of the origin of net zero technology final products which fall under this category, broken down by the share of Union supply originating in different sources in the last year for which data is available.

down by the share of Union supply originating in different sources in the last year for which data is available.

Amendment 7

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) Council Decision 2014/115/EU approved in particular the amendment to the World Trade Organisation Agreement on Government Procurement (the ‘GPA’)⁴⁶. The aim of the GPA is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade. For contracts covered by the European Union’s Appendix I to the GPA, as well as by other relevant international agreements by which the Union is bound, including free trade agreements and the Article III:8(a) of the General Agreement on Tariffs and Trade of 1994 for procurement by governmental agencies of products purchased with a view to commercial resale or with a view to use in the production of goods for commercial sale, contracting authorities and contracting entities should not apply the requirements of Article 19 (1) point (d) to economic operators of sources of supply that are signatories to the agreements.

⁴⁶ Council decision 2014/115/EU of 2 December 2013 on the conclusion of the

Amendment

(30) Council Decision 2014/115/EU approved in particular the amendment to the World Trade Organisation Agreement on Government Procurement (the ‘GPA’)⁴⁶. The aim of the GPA is to establish a multilateral framework of balanced rights and obligations relating to public contracts with a view to achieving the liberalisation and expansion of world trade. For contracts covered by the European Union’s Appendix I to the GPA, as well as by other relevant international agreements by which the Union is bound, including free trade agreements and the Article III:8(a) of the General Agreement on Tariffs and Trade of 1994 for procurement by governmental agencies of products purchased with a view to commercial resale or with a view to use in the production of goods for commercial sale, contracting authorities and contracting entities should not apply the requirements of Article 19 (2a) point (d) to economic operators of sources of supply that are signatories to the agreements. ***The Commission should consider in the implementing act with the criteria to assess the resilience contribution whether the requirements of Article 19 (2a) point (d) should apply to economic operators of certain sources of supply that are signatures to a Net-Zero Partnership agreement.***

⁴⁶ Council decision 2014/115/EU of 2 December 2013 on the conclusion of the

Protocol Amending the Agreement on Government Procurement, (OJ L68, 7.3.2014, p. 1).

Protocol Amending the Agreement on Government Procurement, (OJ L68, 7.3.2014, p. 1).

Amendment 8

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) The application of the provisions on resilience in public procurement procedures set out in Article 19 should be without prejudice to the application of Article 25 of Directive 2014/24/EU of the European Parliament and of the Council⁴⁷, and Articles 43 and 85 of Directive 2014/25/EU of the European Parliament and of the Council⁴⁸, as according with the Commission's guidance of 2019⁴⁹. The same way, public procurement provisions should continue to apply to works, supplies and services subject to Article 19, including article 67 (4) of Directive 2014/24/EU and any implementing measures resulting from the Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products.

⁴⁷ 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).

⁴⁸ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014,

Amendment

(31) The application of the provisions on resilience in public procurement procedures set out in Article 19 ***of this Regulation*** should be without prejudice to the application of Article 25 of Directive 2014/24/EU of the European Parliament and of the Council⁴⁷, and Articles 43 and 85 of Directive 2014/25/EU of the European Parliament and of the Council⁴⁸, as according with the Commission's guidance of 2019⁴⁹. The same way, public procurement provisions should continue to apply to works, supplies and services subject to Article 19, including article 67 (4) of Directive 2014/24/EU and any implementing measures resulting from the Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products ***and the Regulation of the European Parliament and of the Council concerning batteries and waste batteries.***

⁴⁷ 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).

⁴⁸ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014,

p. 243).

⁴⁹ Communication from the Commission: Guidance on the participation of third country bidders and goods in the EU procurement market, Brussels, 24.7.2019, C(2019) 5494 final.

p. 243).

⁴⁹ Communication from the Commission: Guidance on the participation of third country bidders and goods in the EU procurement market, Brussels, 24.7.2019, C(2019) 5494 final.

Amendment 9

Proposal for a regulation Recital 32

Text proposed by the Commission

(32) The weighting of criteria on the sustainability and resilience contribution of the tender in relation to public procurement procedures is without prejudice to the possibility for contracting authorities and contracting entities to set a higher threshold for the criteria relating to environmental sustainability and innovation, in line with Article 41 (3) and Recital 64 of Directive 2014/23/EU of the European Parliament and of the Council⁵⁰, Article 67 (5) of Directive 2014/24/EU and Article 82 (5) of Directive 2014/25/EU.

⁵⁰ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

Amendment

(32) The weighting of criteria on the sustainability and resilience contribution of the tender in relation to public procurement procedures is without prejudice to the possibility for contracting authorities and contracting entities to set a higher threshold for the criteria relating to environmental sustainability and innovation, in line with Article 41 (3) and Recital 64 of Directive 2014/23/EU of the European Parliament and of the Council⁵⁰, Article 67 (5) of Directive 2014/24/EU and Article 82 (5) of Directive 2014/25/EU. ***Contracting authorities should take into account both the sustainability and the resilience criteria contribution in a balanced way without ignoring one or another.***

⁵⁰ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

Amendment 10

Proposal for a regulation Recital 37

Text proposed by the Commission

(37) The Commission should also assist Member States in the design of schemes targeted at households and consumers to build synergies and exchange best practices. The Net-Zero Europe Platform should also play an important role in accelerating the implementation of the sustainability and resilience contribution by Member States and public authorities in their public procurement and auctioning practices. It should issue guidance ***and identify best practices*** on how to ***define the contribution and use it, providing*** concrete and specific examples.

Amendment

(37) The Commission should also assist Member States in the design of schemes targeted at households and consumers to build synergies and exchange best practices. The Net-Zero Europe Platform should also play an important role in accelerating the implementation of the sustainability and resilience contribution by Member States and public authorities in their public procurement and auctioning practices. ***It is important that both the contracting authorities or contracting entities and the suppliers have a clear understanding of each of the sustainability and resilience criteria. Therefore, to ensure a consistent application of the award criteria, the Commission should, in close collaboration with the Net-Zero Europe Platform, adopt an implementing act specifying the criteria to assess the resilience and sustainability contribution, with a particular attention for small and medium-sized enterprises and the level playing field on the European internal market, who should have a fair chance to participate in the substantial market for public procurement. Coherence with all existing legislation will be key. Furthermore, this implementing act should clarify the derogations as provided in Article 19 (4) and how the contracting authorities or contracting entities should apply this in practice. Besides, the Commission should, in close collaboration with the Net-Zero Europe Platform, issue guidance on how to link the sustainability and resilience criteria with upcoming legislation. This guidance can further provide concrete and specific examples and best practices. In order to be coherent with all future legislation, the Commission should update this guidance when the underlying framework changes and at least every 6 months.***

Amendment 11

Proposal for a regulation

Recital 41

Text proposed by the Commission

(41) Where private investment alone is not sufficient, the effective roll-out of net-zero manufacturing projects may require public support in the form of State aid. Such aid must have an incentive effect and be necessary, appropriate and proportionate. The existing State aid guidelines that have recently undergone an in-depth revision in line with the twin transition objectives provide ample possibilities to support investments for projects in the scope of this Regulation subject to certain conditions. Member States can have an important role in easing access to finance for net-zero technologies manufacturing projects *by addressing market failures through targeted State aid support*. The Temporary Crisis and Transition Framework (TCTF) adopted on 9 March 2023 aims at ensuring a level playing field within the internal market, targeted to those sectors where a third-country delocalisation risk has been identified, and proportionate in terms of aid amounts. It would enable Member States to put in place measures to support new investments in production facilities in defined, strategic net-zero sectors, *including via tax benefits*. The permitted aid amount can be modulated with higher aid intensities and aid amount ceilings if the investment is located in assisted areas, in order to contribute to the goal of convergence between Member States and regions. Appropriate conditions are required to verify the concrete risks of diversion of the investment outside the European Economic Area (EEA) and that there is no risk of relocation within the

Amendment

(41) **Only** where private investment alone is not sufficient, the effective roll-out of net-zero manufacturing projects may require public support in the form of State aid. Such aid must have an incentive effect and be necessary, appropriate and proportionate. The existing State aid guidelines that have recently undergone an in-depth revision in line with the twin transition objectives provide ample possibilities to support investments for projects in the scope of this Regulation subject to certain conditions. Member States can have an important role in easing access to finance for net-zero technologies manufacturing projects. **However, Member States need to consider if State aid is really necessary and if the public support is addressing market failures.** The Temporary Crisis and Transition Framework (TCTF) adopted on 9 March 2023 aims at ensuring a level playing field within the internal market, targeted to those sectors where a third-country delocalisation risk has been identified, and proportionate in terms of aid amounts. It would enable Member States to put in place measures to support new investments in production facilities in defined, strategic net-zero sectors, **which differ from the scope of this Regulation**. The permitted aid amount can be modulated with higher aid intensities and aid amount ceilings if the investment is located in assisted areas, in order to contribute to the goal of convergence between Member States and regions. Appropriate conditions are required to verify the concrete risks of diversion of the investment outside the

EEA. To mobilise national resources for that purpose, Member States may use a share of the ETS revenues that Member States have to allocate for climate-related purposes.

European Economic Area (EEA) and that there is no risk of relocation within the EEA. To mobilise national resources for that purpose, Member States may use a share of the ETS revenues that Member States have to allocate for climate-related purposes.

Amendment 12

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

1. Contracting authorities or contracting entities shall base the award of contracts for net-zero technology listed in the Annex in a public procurement procedure on the most economically advantageous tender, which shall include the best price-quality ratio, comprising at least the sustainability and resilience contribution of the tender, in compliance with Directives 2014/23/EU, 2014/24/EU, or 2014/25/EU and applicable sectoral legislation, as well as with the Union's international commitments, including the GPA and other international agreements by which the Union is bound.

Amendment

1. Contracting authorities or contracting entities shall base the award of contracts for net-zero technology listed in the Annex in a public procurement procedure on the most economically advantageous tender, which shall include the best price-quality ratio, comprising at least the sustainability and resilience contribution of the tender, in compliance with Directives 2014/23/EU, 2014/24/EU, or 2014/25/EU and applicable sectoral legislation, as well as with the Union's international commitments, including the GPA and other international agreements by which the Union is bound. ***Contracting authorities or contracting entities shall ensure that the procurement process is open, non-discriminatory and transparency, allowing fair competition among all eligible suppliers.***

Amendment 13

Proposal for a regulation Article 19 – paragraph 2 – introductory part

Text proposed by the Commission

2. The tender's sustainability ***and***

Amendment

2. The tender's sustainability

resilience contribution shall **be based on** the following *cumulative* criteria which shall be objective, transparent and non-discriminatory:

contribution shall **take into account** the following criteria which shall be objective, transparent and non-discriminatory:

Amendment 14

Proposal for a regulation Article 19 – paragraph 2 – point a

Text proposed by the Commission

(a) environmental sustainability **going beyond** the minimum requirements in applicable legislation;

Amendment

(a) environmental sustainability, **fulfilling at least** the minimum requirements in applicable **national or Union** legislation **or going beyond**;

Amendment 15

Proposal for a regulation Article 19 – paragraph 2 – point b

Text proposed by the Commission

(b) where an innovative solution **needs to be** developed, the impact and the quality of the implementation plan, including risk management measures;

Amendment

(b) where an innovative solution **is** developed, the impact and the quality of the implementation plan, including risk management measures;

Amendment 16

Proposal for a regulation Article 19 – paragraph 2 – point d

Text proposed by the Commission

(d) **the tender's contribution to resilience, taking into account the proportion of the products originating from a single source of supply, as determined in accordance with Regulation (EU) No 952/2013 of the**

Amendment

(d) **deleted**

European Parliament and of the Council⁷², from which more than 65% of the supply for that specific net-zero technology within the Union originates in the last year for which data is available for when the tender takes place.

⁷² 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).

⁷² 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).

Amendment 17

Proposal for a regulation Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The tender's resilience contribution shall take into account the following criteria which shall be objective, transparent and non-discriminatory:

the tender's contribution to resilience, with a focus on diversification of the corresponding supply chains, the energy security of the Union and the security of supply. The supply shall be deemed insufficiently resilient and diversified where a single non EU source, as determined in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council⁷², supplied in the last year for which the data is available more than 65% of the total demand within the Union for a specific net-zero technology or the key components for the production of these technologies. The Commission will adopt an implementing act specifying the application of this criteria in according with Article 22 (2).

⁷² 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).

Amendment 18

Proposal for a regulation Article 19 – paragraph 3

Text proposed by the Commission

3. Contracting authorities and contracting entities shall give the tender's sustainability and resilience contribution a weight between 15% and 30% of the award criteria, without prejudice of the application of Article 41 (3) of Directive 2014/23/EU, Article 67 (5) of Directive 2014/24/EU or Article 82 (5) of Directive 2014/25/EU for giving a higher weighting to the criteria referred to in paragraph 2, points (a) and (b).

Amendment

3. Contracting authorities and contracting entities shall give the tender's sustainability and resilience contribution a weight between 15% and 30% of the award criteria **taking into account both the sustainability and the resilience contribution in a balanced way**, without prejudice of the application of Article 41 (3) of Directive 2014/23/EU, Article 67 (5) of Directive 2014/24/EU or Article 82 (5) of Directive 2014/25/EU for giving a higher weighting to the criteria referred to in paragraph 2, points (a) and (b).

Amendment 19

Proposal for a regulation Article 19 – paragraph 4

Text proposed by the Commission

4. The contracting authority or the contracting entity **shall not be obliged** to apply **the considerations relating to** the sustainability and resilience contribution of net-zero technologies where their application would oblige that authority or entity to acquire equipment having disproportionate costs, or technical characteristics different from those of existing equipment, resulting in

Amendment

4. **By derogation of paragraph 3**, the contracting authority or the contracting entity **may decide not** to apply the sustainability and resilience contribution of net-zero technologies where their application would **clearly** oblige that authority or entity to acquire equipment having disproportionate costs, or technical characteristics different from those of existing equipment, resulting in

incompatibility, technical difficulties in operation and maintenance. Cost differences above 10% may be presumed by contracting authorities and contracting entities to be disproportionate. This provision shall be without prejudice of the possibility to exclude abnormally low tenders under Article 69 of Directive 2014/24/EU and Article 84 of Directive 2014/25/EU, and without prejudice to other contract award criteria according to the EU legislation, including social aspects according to Articles 30 (3) and 36 (1), second intent of Directive 2014/23/EU, Articles 18 (2) and 67 (2) of Directive 2014/24/EU and Articles 36 (2) and 82 (2) of Directive 2014/24/EU.

incompatibility, technical difficulties in operation and maintenance. Cost differences above 10%, ***compared to a tender without the sustainability and resilience contribution***, may be presumed by contracting authorities and contracting entities to be disproportionate. This provision shall be without prejudice of the possibility to exclude abnormally low tenders under Article 69 of Directive 2014/24/EU and Article 84 of Directive 2014/25/EU, and without prejudice to other contract award ***and exclusion*** criteria according to the EU legislation, including ***quality and*** social aspects according to Articles 30 (3) and 36 (1), second intent of Directive 2014/23/EU, Articles 18 (2) and 67 (2) of Directive 2014/24/EU and Articles 36 (2) and 82 (2) of Directive 2014/24/EU.

Amendment 20

Proposal for a regulation Article 19 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Member States shall not discriminate or give different treatment of providers or net-zero products from another Member State, based on sustainability and resilience criteria.

Amendment 21

Proposal for a regulation Article 22 – paragraph 1

Text proposed by the Commission

Amendment

1. ***Where relevant***, the Commission shall ***provide guidance on*** the criteria to assess the resilience and sustainability

1. ***By [OP: Please insert the date = 12 months after the date of entry into force of this Regulation]***, the Commission shall

contribution of available products covered by the forms of public intervention covered under articles 19, 20 and 21.

adopt an implementing act specifying the criteria to assess the resilience and sustainability contribution of available products covered by the forms of public intervention covered under articles 19, 20 and 21 in coherence with relevant provisions in other existing legislation, and providing rules how the derogation in Article 19, paragraph 4, shall apply. In this implementing act, the Commission shall take into consideration small and medium-sized enterprises and the market openness, transparency and non-discrimination principles in the application of these provisions by contracting authorities or contracting entities. When specifying environmental sustainability criteria, the Commission shall take into account the following non-exhaustive list: the durability and reliability of the solution; the ease and effort of repair, maintenance, upgrading and refurbishment; the ease and quality of recycling; the use of substances; the environmental footprint of the product and its life cycle environmental impacts; the carbon footprint of the product; the microplastic release; emissions to air, water or soil released in one or more life cycle stages of the product; the amounts of waste generated.

Amendment 22

Proposal for a regulation Article 22 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. In case of conflict between the different award and sustainability criteria set under other Union law, the Commission shall provide guidance on how those provisions coexist or if necessary which criteria prevails. The Commission shall update this guidance

every 6 months.

Amendment 23

Proposal for a regulation Article 22 – paragraph 2

Text proposed by the Commission

2. The Commission shall ***make available*** and regularly update a list of each of the net-zero technology final products listed in the Annex, broken down by the share of Union supply originating in different third countries in the last year for which data is available.

Amendment

2. ***When specifying the application of resilience criteria in accordance to Article 19, paragraph 2 a,*** the Commission shall ***develop*** and regularly update a list of each of the net-zero technology final products listed in the Annex, broken down by the share of Union supply originating in different third countries in the last year for which data is available.

Amendment 24

Proposal for a regulation Article 22 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. For the purpose of Article 19, paragraph 2 a, the Commission can consider that products produced in third countries, which are signatures to a Net-Zero Partnership agreement, are equal to products produced within the Union and that these products shall, in that case, not be taken into account for the criteria.

Amendment 25

Proposal for a regulation Article 22 – paragraph 3

Text proposed by the Commission

3. The Net-Zero Europe Platform shall discuss measures carried out by Member States to implement Articles 19 and 21 and exchange best practices, inter alia, as concerns the practical use of criteria defining the sustainability and resilience contribution in public procurement, or schemes incentivising the purchase of net-zero technology final products.

Amendment

3. The Net-Zero Europe Platform shall discuss measures carried out by Member States to implement Articles 19 and 21 and exchange best practices ***and knowledge***, inter alia, as concerns the practical use of criteria defining the sustainability and resilience contribution in public procurement, or schemes incentivising the purchase of net-zero technology final products. ***The Commission shall issue a best practices guidelines for the effective procurement procedures in the Member States.***

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Establishing a framework of measures for strengthening Europe’s net-zero technology products manufacturing ecosystem (Net Zero Industry Act)		
References	COM(2023)0161 – C9-0062/2023 – 2023/0081(COD)		
Committee responsible Date announced in plenary	ITRE 8.5.2023		
Opinion by Date announced in plenary	IMCO 8.5.2023		
Associated committees - date announced in plenary	15.6.2023		
Rapporteur for the opinion Date appointed	Tom Vandenkendelaere 27.4.2023		
Discussed in committee	22.5.2023	28.6.2023	17.7.2023
Date adopted	19.9.2023		
Result of final vote	+: –: 0:	34 0 1	
Members present for the final vote	Alex Agius Saliba, Andrus Ansip, Pablo Arias Echeverría, Laura Ballarín Cereza, Alessandra Basso, Brando Benifei, Biljana Borzan, Vlad-Marius Botoș, Anna Cavazzini, Dita Charanzová, Deirdre Clune, David Cormand, Sandro Gozi, Svenja Hahn, Krzysztof Hetman, Virginie Joron, Eugen Jurzyca, Arba Kokalari, Marcel Kolaja, Andrey Kovatchev, Jean-Lin Lacapelle, Morten Løkkegaard, Beata Mazurek, Leszek Miller, Anne-Sophie Pelletier, Christel Schaldemose, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Róza Thun und Hohenstein, Tom Vandenkendelaere, Kim Van Sparrentak		
Substitutes present for the final vote	Carlo Fidanza, Malte Gallée		
Substitutes under Rule 209(7) present for the final vote	João Albuquerque		

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

34	+
ECR	Carlo Fidanza, Beata Mazurek
ID	Alessandra Basso, Virginie Joron, Jean-Lin Lacapelle
PPE	Pablo Arias Echeverría, Deirdre Clune, Krzysztof Hetman, Arba Kokalari, Andrey Kovatchev, Andreas Schwab, Tomislav Sokol, Ivan Štefanec, Tom Vandenkendelaere
Renew	Andrus Ansip, Vlad-Marius Botoș, Dita Charanzová, Sandro Gozi, Svenja Hahn, Morten Løkkegaard, Róza Thun und Hohenstein
S&D	Alex Agius Saliba, João Albuquerque, Laura Ballarín Cereza, Brando Benifei, Biljana Borzan, Leszek Miller, Christel Schaldemose
The Left	Anne-Sophie Pelletier
Verts/ALE	Anna Cavazzini, David Cormand, Malte Gallée, Marcel Kolaja, Kim Van Sparrentak

0	-

1	0
ECR	Eugen Jurzyca

Key to symbols:

+ : in favour

- : against

0 : abstention