

International public procurement instrument

2012/0060(COD) - 14/12/2021 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted by 590 votes to 8, with 99 abstentions, **amendments** to the proposal for a regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

The matter was referred back to the committee responsible for inter-institutional negotiations.

The main amendments adopted in plenary concern the following points:

Subject matter and scope

The Regulation:

- establishes measures intended to **improve the access of Union economic operators, goods and services to the procurement and concessions markets of third countries**, regarding non-covered procurement (meaning procurement procedures for goods, services or concessions regarding which the Union has not undertaken market access commitments in an international agreement in the field of procurement or concessions);
- lays down **procedures** for the Commission to undertake investigations into alleged third-country measures or practices against Union economic operators, goods and services, and to enter into consultations with the third countries concerned.

The International Procurement Instrument (IPI) encourages greater openness of public procurement markets in countries that protect this sector, by introducing measures that limit access to open EU tenders for non-EU companies from countries that do not offer similar access conditions to EU companies.

Members suggested that the Commission should be able to impose IPI measures, by means of implementing acts, in relation to such measures or practices of third countries, in order to limit the access of economic operators, products or services from third countries to EU procurement procedures.

Environmental and social requirements

Contracting authorities should adopt the necessary measures to ensure that applicable environmental, social and labour requirements are taken into account in public procurement procedures. Member States should inform the Commission of any difficulties, in law or in fact, encountered and reported by their economic operators and which are due to the non-observance of the international environmental, social and labour law, when those undertakings have tried to secure the award of contracts within the EU or in third countries.

Determination of origin

The origin of a service would be determined on the basis of the origin of the legal or natural person providing it. The origin of a legal person should be considered to be the country under the laws of which the legal person is constituted or otherwise organised and in the territory of which the legal person is engaged in substantive business operations.

Investigation and consultation

When assessing whether specific measures or practices exist in a third country that could result in the impairment of access of Union goods, services or economic operators to the procurement or concession markets, the Commission should examine to what degree laws, rules or other measures on procurement and concessions of the country concerned ensure **transparency** in line with international standards, and do not result in **serious and recurring restrictions** against Union goods, services or economic operators.

The Commission should be able to initiate at any time a transparent investigation into restrictive or discriminatory procurement measures or practices allegedly adopted or maintained by a third country, if it considers that such an investigation is in the interest of the Union. In this context, particular attention should be paid to the general objective of **achieving reciprocity** by opening third-country markets and improving market access opportunities for EU economic operators.

The Commission should keep interested parties, the European Parliament and the Member States regularly informed within the Committee established by the Trade Barriers Regulation.

IPI measures

If the investigation confirms the existence of restrictive measures or practices, and the consultations with the country concerned do not lead to satisfactory corrective actions that result in effectively remedying the serious and recurrent impairment of access for Union economic operators, goods and services within a reasonable timeframe or the third country concerned declines to enter into consultations, the Commission should adopt, under this Regulation, IPI measures in the form of a **score adjustment or exclusion of tenders**.

A score adjustment measure should be applied only for the purpose of the evaluation of tenders submitted by economic operators originating in the country concerned. It should not affect the price actually due to be paid under the contract to be concluded with the successful tenderer.

Invitations to tender concerned

The IPI measure should only apply to procurement procedures with an estimated value of at least EUR 10 000 net of value-added tax for works and concessions, and of at least EUR 5 000 000 net of value-added tax for goods and services.

Additional obligations

In the case of procurement procedures to which an IPI measure applies, contracting authorities should include, as one of the conditions of the contract with the successful tenderer, an obligation not to subcontract, including through the delivery of goods and parts, more than 25% of the total value of the contract to economic operators originating in a third country which is subject to an IPI measure.

Contracting authorities should include a reference to the additional conditions in the documents for procurement procedures to which an IPI measure applies. The Commission and Member States should make available best practice guidelines to take into account the information needs of SMEs submitting stand-alone tenders.

Review

No later than three years after the date of entry into force of the Regulation and every three years thereafter, the Commission should review the scope, functioning and efficiency of the Regulation and report to the European Parliament and the Council.

