



**2012/0060(COD)**

31.5.2017

## **DRAFT OPINION**

of the Committee on the Internal Market and Consumer Protection

for the Committee on International Trade

on the proposal for a regulation of the European Parliament and of the Council  
on the access of third-country goods and services to the Union's internal  
market in public procurement and procedures supporting negotiations on  
access of Union goods and services to the public procurement markets of third  
countries

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

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## SHORT JUSTIFICATION

### Background

In March 2012 the European Commission adopted the first proposal for a Regulation, establishing a so-called International Procurement Instrument in order to increase the leverage of the European Union in international trade negotiations, with a view to achieving improved market access opportunities for European economic operators in third countries' public procurement markets.

In January 2014 the European Parliament adopted in plenary amendments to the proposal and the matter was referred back to the committee responsible for further consideration. The file was blocked in the Council and the Parliament did not engage into trilogue negotiations.

On 29 January 2016 the Commission presented an amended proposal. This amended proposal

- deletes the decentralized procedure initially proposed (which empowered contracting authorities/entities to exclude foreign tenders autonomously) and offers now only a centralised procedure where the Commission investigates and takes action with respect to a third country;
- deletes the possibility to close the market as a response measure and limits the options to applying price penalties, now called "price adjustment measures" (applicable only for the evaluation process and not determining final price). In addition, foreign tenders could still be awarded the contract if despite the price adjustment the offer remains competitive. The provision on abnormally low tenders is deleted;
- narrows the application scope of the instrument in that it should not apply to suppliers from least developed countries or the more vulnerable developing countries or tenders from European SMEs, and application should be limited to contracts above a certain threshold;
- moves the burden of proof to the bidders from the targeted third country that less than 50% of the total value of their tender is made up of non-covered goods/services;
- adds a new possibility to limit application to certain suppliers from the third country concerned and limits implementation to a select group of contracting authorities in each EU Member State;
- clarifies that the instrument will apply to all procurement and concessions covered by the 2014 procurement and concession Directives and that Member States and contracting authorities/entities may not apply restrictive measures beyond those provided by the Regulation;
- refers to "restrictive and discriminatory procurement measures or practices" instead of using the expression "lack of substantive reciprocity".

Since the amended proposal has deleted some provisions of stronger relevance to the internal market rules, especially by deleting the empowering of individual contracting authorities to reject tenders (old Article 6), the IMCO competences are even more limited. However, even in the centralised Commission driven mechanism the legislation affects the behaviour of EU contracting authorities in the tendering procedures and the internal market.

IMCO remains associated committee under RoP 54 on a limited number of issues, including:

A. exclusive competence on

- new Article 11 (2), (3), (4): on the application of the price adjustment measures
- new Article 12 (2), (3), (4): on the exception to price adjustment measures
- new Article 14(3): on the Committee procedure
- new Article 17: on repealing articles 85 and 86 of 2014/25/EU

B. shared competences on

- Article 2: Definitions
- new Article 9: about the authorities or entities concerned by the measures taken under Article 8
- new Article 12 (1): on the exception to price adjustment measures
- new Article 13 on implementation
- new Article 14 (1): Committee procedure
- new Article 15: on confidentiality
- new Article 16: on reporting

At first place, this draft Opinion includes the amendments adopted by the IMCO committee on 17 October 2013, on the provisions that were kept in the amended Commission proposal and fall within IMCO's exclusive or shared competences. Also a number of IMCO amendments are taken over in the Commission's amended 2016 proposal.

## AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on International Trade, as the committee responsible, to take into account the following amendments:

### Amendment 1

#### Proposal for a regulation Title

*Text proposed by the Commission*

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

*Amendment*

REGULATION OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

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

Or. en

### *Justification*

*This amendment refers to Am 86 of opinion in Final Report A7-0454/2013.*

## **Amendment 2**

### **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 ***safeguard its values, fundamental interests, security, independence and integrity and to*** encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade.

Or. en

### *Justification*

*This amendment refers to Am 87 of opinion in Final Report A7-0454/2013.*

## **Amendment 3**

### **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 concession*** markets of the Union and its trading partners, in a spirit of reciprocity and mutual benefit.

Or. en

### *Justification*

*This amendment refers to Am 88 of opinion in Final Report A7-0454/2013.*

#### **Amendment 4**

##### **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 **and concessions** practices in many of the trading partner of the Union. Those restrictive procurement practices result in the loss of substantial trading opportunities.

Or. en

### *Justification*

*This amendment refers to Am 89 of opinion in Final Report A7-0454/2013.*

#### **Amendment 5**

##### **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

###### *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 **the** laws on public procurement and concessions of the country concerned ensure transparency in line with international standards in the field of public procurement **and concessions** and preclude any discrimination against Union goods, services and economic operators. In addition, it should examine to

individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

what degree individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Or. en

### *Justification*

*This amendment refers to Am 98 of opinion in Final Report A7-0454/2013.*

## **Amendment 6**

### **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 **and concession** 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.

Or. en

### *Justification*

*This amendment refers to Am 100 of opinion in Final Report A7-0454/2013.*

## **Amendment 7**

### **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

##### *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.

restrictive procurement ***and concessions*** 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

#### *Justification*

*This amendment refers to Am 102 of opinion in Final Report A7-0454/2013.*

### **Amendment 8**

#### **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 a restrictive and/or discriminatory procurement ***or concessions*** 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

#### *Justification*

*This amendment refers to Am 103 of opinion in Final Report A7-0454/2013.*

### **Amendment 9**

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

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

(33) In accordance with the principle of proportionality, it is necessary and appropriate for achievement of the basic

##### *Amendment*

(33) In accordance with the principle of proportionality, it is necessary and appropriate for achievement of the basic



objective of establishing a common external policy in the field of public procurement to lay down common rules on the treatment of tenders which include goods and services not covered by the international commitments of the 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,

objective of establishing a common external policy in the field of public procurement **and concessions** to lay down common rules on the treatment of tenders which include goods and services not covered by the international commitments of the 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. en

#### *Justification*

*This amendment refers to Am 107 of opinion in Final Report A7-0454/2013.*

### **Amendment 10**

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

#### **Article 2 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### *Justification*

*This amendment refers to Am 114 of opinion in Final Report A7-0454/2013.*

### **Amendment 11**

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

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

*Text proposed by the Commission*

*Amendment*

**(ga) ‘satisfactory remedial or corrective measures’ means removal of the restrictive measures targeted by the Commission’s investigation.**

Or. en

*Justification*

*This amendment refers to Am 117 of opinion in Final Report A7-0454/2013.*

**Amendment 12**

**Proposal for a regulation  
Article 15 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

*Justification*

*This amendment refers to Am 132 of opinion in Final Report A7-0454/2013.*

**Amendment 13**

**Proposal for a regulation  
Article 15 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

*This amendment refers to Am 133 of opinion in Final Report A7-0454/2013.*

## Amendment 14

### Proposal for a regulation

#### Article 16 – paragraph 1

*Text proposed by the Commission*

***By 31 December 2018*** and at least every three years thereafter, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for Union economic operators to public contract or concession award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

*Amendment*

***One year after entry into force of this Regulation and thereafter*** at least every three years thereafter, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for Union economic operators to public contract or concession award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information.

Or. en

*Justification*

*This amendment refers to Am 134 of opinion in Final Report A7-0454/2013.*