

International public procurement instrument

2012/0060(COD) - 15/01/2014 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted 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 further consideration. The vote was put back to a later session.

A sustainable industry policy strategy in the Union: Parliament stressed the need to **exclude unfair tenders** comprising goods and/or services originating outside the Union. At the same time, reciprocity and fair conditions for the market access of Union industries should be ensured.

Union trade policy should help to **reduce poverty worldwide** by promoting improved working conditions, health and safety at work and fundamental rights.

Keep the principle of uniformity of the Common Commercial Policy (CCP): Parliament stated that that Member States or their contracting authorities may restrict the access of third country goods and services to their tendering procedures **only by measures provided for in the Regulation or by relevant Union law**, and only after an investigation by the Commission has revealed the absence of substantial reciprocity by the third country concerned.

'Lack of substantial reciprocity' is defined as the existence of any legislative, regulatory or administrative measure, procedure or practice, adopted or performed by public authorities or individual procuring entities in a third country, restricting access to public procurement or concession markets, in particular by a lack of transparency compared to international standards and discriminatory legislative provisions and administrative practices, which results in serious and recurrent discriminatory treatment against Union economic operators, goods or services.

Scope: the Regulation shall apply to the award of contracts and to the award of concessions for services provided for governmental purposes. It is recalled that the Regulation will apply to contracts with an estimated value equal or above EUR 5 000 000 exclusive of value-added tax (VAT). Tenders comprising goods and/or services originating outside the European Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of these goods or services are normally excluded.

Parliament proposed to exclude from the scope of the Regulation **developing countries considered vulnerable** due to a lack of diversification and insufficient integration within the international trading system as well as countries and potential GSP+ beneficiary countries.

Rules of origin: the determination of the origin of a service should be made in line with the principles of the WTO General Agreement on Trade in Services (GATS). The provisions determining the rules of origin of services should prevent the circumvention of restrictions on access to the Union public procurement market through the establishment of "letterbox" companies.

Procedure: Members wanted to ensure that the term 'calendar days' is consistently used throughout the proposal instead of 'days', 'calendar days' and 'working days'. They also **shortened the length of the procedures** throughout the proposal to provide faster protection, and made amendments intended to avoid an endless consultation procedure with third countries.

Observance of social and environmental standards: in the performance of public contracts economic operators must comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions.

A ‘lack of substantial reciprocity’ shall be presumed, where there is non-observance of international labour law provisions listed in the [Directive on public procurement](#).

Assess impact and review the instrument: Parliament proposes incorporating a review clause, which obliges the Commission to look into the impact of the regulation, after it has come into force and being applied for a few years. Accordingly, when the Commission submits its second report, it shall also submit a legislative proposal for an amended Regulation or set out the reasons why, in its view, no changes are necessary.

For the same reason, Parliament suggests **limiting the application of any restrictive measures** taken through an implementing act to up to **5 years** (which may be extended for 5 years) so as to avoid these measures turning into a permanent closure of the market.