International public procurement instrument

2012/0060(COD) - 09/06/2022 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 554 votes to 7, with 14 abstentions, a legislative resolution 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.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Subject matter and scope

The Regulation:

- establishes measures to **improve access for EU economic operators, goods and services to third country procurement markets and concessions**, as regards 'non-covered procurement', i.e. procurement procedures for goods, services or concessions for which the EU has not made market access commitments under an international agreement;

- 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.

This Regulation provides for the possibility for the Commission to impose IPI measures in relation to such third-country measures or practices to restrict the access of economic operators, goods or services from third countries to Union public procurement procedures.

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.

Environmental, social and labour requirements should apply to economic operators.

Determination of origin

The origin of a service should 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 whose law a legal person is incorporated or organised and in whose territory it engages in substantial business operations.

Investigations and consultations

On its own initiative or upon a duly substantiated complaint by an interested party from the Union or a Member State, the **Commission may initiate an investigation** into an alleged measure or practice of a third country. The Commission should invite the third country concerned to submit its observations, to provide relevant information and to enter into consultation with the Commission with a view to eliminating or remedying the alleged third country measure or practice.

In view of the Union's objective of encouraging sustainable economic growth in low-income countries, the Commission should not be able to launch an investigation into the practices of **least developed countries** benefiting from the Everything But Arms regime.

IPI measures

If the investigation confirms the existence of the restrictive measures or practices, and concertation with the country concerned does not lead to satisfactory corrective action, or if the third country concerned refuses to participate in the concertation process, the Commission should adopt an **IPI measure in the form of an adjustment of the outcome or exclusion of tenders**, if it deems this to be in the Union's interest.

In this context, particular attention should be paid to the general objective of achieving reciprocity by opening up third country markets and improving market access opportunities for EU economic operators.

An adjustment of the result should only apply for the purpose of evaluating tenders submitted by economic operators originating from the third country concerned. Such a measure should not affect the price to be paid under the contract to be concluded with the successful tenderer.

The IPI measure should only apply to procurement procedures with an estimated value of at least **EUR 15 million** excluding value added tax for works and concessions, and at least **EUR 5 million** excluding value added tax for goods and services.

The Commission may **withdraw, suspend or reinstate** an IPI measure by means of an implementing act and, in such cases, will publish a notice in the Official Journal of the European Union. An IPI measure will expire five years after its entry into force and may be extended for a further five years.

List of contracting authorities exempted from the Regulation

Member States should be able to apply for exemption from IPI measures for a limited list of local contracting authorities, under certain strict conditions.

Anti-circumvention measures

In order to avoid circumvention, additional obligations should be imposed on successful tenderers in procurement procedures to which an IPI measure is applicable, such as an obligation not to subcontract more than 50% of the total value of the contract to economic originating in third country subject to the IPI measure.

Guidelines and review

The Commission should publish guidelines to guide Member States' contracting authorities in the use of this Regulation, and in particular to facilitate its application by SMEs.

No later than four years after the adoption of an implementing act or five years after the date of entry into force of the Regulation, and every five years thereafter, the Commission should review the scope, functioning and effectiveness of the Regulation and report its findings to the European Parliament and the Council.