

## Topic : International Procurement Instrument (IPI)

### Brief description and main aims:

In 2012, the European Commission issued a proposal for a *Regulation 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* - also known as International Procurement Instrument (IPI). The main aim consisted in increasing the EU's leverage in negotiations in order to achieve reciprocity as regards the access of European companies to foreign procurement markets. Basically, where a third country not being member to the WTO Government Procurement Agreement (GPA) restricts the market access for European companies, economies operators from the concerned country could be subject to restrictive measures taken by the European Commission. As there was not a majority in support of the proposal in the Council of the EU, the European Commission presented an amended proposal in 2016. The new proposal clearly weakens the instrument. It limits potential restrictive measures to price penalties and would prohibit national contracting authorities from excluding tenders from non-GPA members from their bidding procedures. The legislative file has been at a standstill in the last years since the Council could not agree on a common approach. However, the Council recently resumed its work on the file.

### Why FIEC is dealing with this topic:

FIEC treats this issue in cooperation with the European International Contractors (EIC) and the European Dredging Association (EuDA). Dealing with internal market issues, FIEC considers the IPI as a vehicle to prevent unfair competition on the internal market while our partners are addressing the external challenges. In the last years, we observe a growing number of huge infrastructure projects being awarded to Chinese State-owned enterprises (SOEs) submitting extremely low prices against which private European companies cannot compete. FIEC is mostly concerned by the fact that the IPI proposal as it stands now, would completely open the EU procurement market to third country bidders while undermining provisions of existing public procurement legislation. Therefore, FIEC advocates for several modifications of the proposal. Most importantly, it must be assured that the IPI comes as a complement to existing legislation and does not overrule it.

Ensuring a level playing field on the internal market also requires actions going beyond the IPI. For instance, EU Anti-Dumping Regulations should apply to services as well, not only to goods. Furthermore, FIEC pledges for a State Aid Test to be conducted when third country companies want to participate in tendering procedures. Also, since there is no legal definition of abnormally low tenders (ALT), FIEC demands that a check-triggering mechanism should be established in order to limit the room for manoeuvre of contracting authorities when dealing with such tenders. In a similar vein, the price must not be the only criterion when determining the most economically advantageous tender (MEAT).

### Actions and key dates:

- 21/03/2012** – European Commission issues IPI proposal
- 29/01/2016** – European Commission issues amended IPI Proposal
- 12/06/2019** – FIEC/EIC/EuDA Action Plan
- 17/09/2019** – FIEC/EIC/EuDA position paper on Fostering a Level Playing Field in Construction Services
- 11/2019** – FIEC meets parliamentary assistant of MEP Daniel Caspary (EPP), Rapporteur on the IPI in the Trade Committee
- 01/2020** – FIEC meets MEP Inmaculada Rodríguez-Piñero (S&D), Shadow-Rapporteur on the IPI in the Trade Committee
- 02/2020** – FIEC meets parliamentary assistant of MEP Liesje Schreinemacher (RENEW), Shadow-Rapporteur on the IPI in the Trade Committee
- 03/2020** – FIEC contributes to BusinessEurope's Position Paper