



FIEC/ EIC/ EuDA joint voting recommendations

for the

amended proposal for a "market access" regulation
(also known as "international procurement instrument, IPI")

COM(2016) 34 final
2012/0060(COD)

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FIEC is the **European Construction Industry Federation**, representing via its 31 national Member Federations in 27 countries (26 EU & EFTA and Turkey) construction enterprises of all sizes, i.e. craftsmen, small and medium-sized enterprises as well as "global players", carrying out all forms of building and civil engineering activities.

EIC (European International Contractors) has as its members construction industry trade associations from fifteen European countries and represents the interests of the European construction industry in all questions related to its international construction activities.

In 2016, the international turnover of companies associated with EIC's Member Federations amounted to more than 170 billion €.

EuDA is the **European Dredging Association** and is the official interface between the European dredging industry and the European Institutions. EuDA members employ approximately 25,000 European employees directly "on land and on board of the vessels" and more than 48,300 people indirectly (through the suppliers and services companies). The combined fleet of EuDA's members counts approximately 750 seaworthy EU-flagged vessels.

GENERAL RECOMMENDATION

Text COM(2016) 34 final	Amendments 66 and 67
	<i>The European Parliament rejects the commission proposal.</i>

FIEC/ EIC/ EuDA recommend to **VOTE IN FAVOUR** of Amendments 66 and 67 and calls upon Members of the European Parliament to reject the proposed Amended Regulation COM(2016) 34 final:

- The amended Proposal does no longer pursue the original idea and the purported objective of the original Proposal COM(2012) 124 final, namely to gain leverage in order to open up public procurement markets in trade negotiations and thus **ensure a level playing field in market access in public procurement.**



- Reversely, the amended proposal intends to erase the possibility for contracting authorities/entities in EU Member States to exclude foreign bidders from third countries, which have closed their government procurement market for European companies, from their tenders and would therefore **weaken (or even abandon) the principle of reciprocity**, which is well-established in international trade relations and in particular in the field of government procurement.
- The **elimination of the so-called “decentralised” procedure** mentioned in the Proposal COM(2012) 124 final and the **limitation of possible restrictive measures to new proposed price penalties up to 20%** are **neither suitable** to open third country procurement markets nor can they serve to prevent **unfair competition by third country enterprises, in particular State-Owned Enterprises, within the EU Internal Market**.
- FIEC/ EIC/ EuDA wish to draw the attention of the European Parliament to the ongoing debate on the award to the **“Pelješac bridge” in Croatia** ([read more](#)). In June 2017, the EU Commission allocated EUR 357 million under the Cohesion Fund to a project to build a bridge that will connect Dubrovnik to the rest of mainland Croatia from the northern coast of the Pelješac peninsula. European funds will cover 85% of the project costs. The contract was awarded in January 2018 to a **consortium of Chinese state-owned construction enterprises which offered a price more than 36% below** the European tenderers. This example indicates quite well that the proposed **price adjustment mechanism will not be sufficient to establish a level playing field in equal market access** to public procurement markets in the EU.
- **Hence, the proposed draft Regulation, in particular in its amended version, would not help opening third-country procurement markets for European companies, but open the European procurement market completely for third country bidders.** FIEC/ EIC/ EuDA therefore, favour a complete rejection of the Commission proposal, as such **rejection would safeguard the competency of individual contracting authorities to exclude an offer from a third-country tenderer on the basis of the reciprocity principle enshrined in the GPA (Agreement on Government Procurement).**
- Furthermore, the proposed unconditional move by the EU would practically delete the difference between, on the one hand, having reciprocal facilitation of access to public procurement markets by plurilateral instruments such as the GPA or bilateral agreements and, on the other hand, of not having committed to any such reciprocal opening. Consequently, such a move would weaken the EU position in future discussions with third countries concerning the GPA or bi-lateral government procurement agreements. FIEC/ EIC/ EuDA hold the opinion that, if the principle of reciprocity governs the relationship between GPA signatories, then the **principle must apply “a fortiori” between the EU and non-GPA members**. Otherwise, non-members of the GPA would not have any incentive to join this GPA!



FIEC/ EIC/ EuDA RECOMMENDATIONS ON SPECIFIC AMENDMENTS

In case that the European Parliament does not adopt AM 66/67 completely rejecting the proposed Amended Regulation COM(2016) 34 final, then, as a fall-back position, FIEC/ EIC/ EuDA calls upon Members of the European Parliament to **MAINTAIN THE COMPETENCY OF INDIVIDUAL CONTRACTING AUTHORITIES TO REJECT AN OFFER FROM A THIRD-COUNTRY TENDERER** by re-introducing the former “decentralised” procedure. The “decentralised” procedure ensures in a better way than the “centralised” procedure the competency of individual contracting authorities to reject an offer from a third-country tenderer on the basis of the reciprocity principle enshrined the GPA.

Furthermore FIEC/ EIC/ EuDA wish to submit the following voting recommendations on some specific amendments:

Text COM(2016) 34 final	Amendment 70
<p>(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.</p>	<p>(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. With the view to levelling the playing field and to ensuring reciprocal market access, this reform seeks to allow the European Commission as well as Member States’ contracting authorities to exclude non-Union companies from public procurement contracts in the Union, unless their home country opens up its public procurement markets to Union companies.</p>

FIEC/ EIC/ EuDA recommend to vote in favour of this amendment as it safeguards the competency of individual contracting authorities to reject an offer from a third-country tenderer on the basis of the reciprocity principle enshrined the GPA. **FIEC/ EIC/ EuDA hold the legal opinion that, if the principle of reciprocity governs the relationship between GPA signatories, then the principle must apply “a fortiori” between the EU and non-GPA members. Otherwise, non-members of the GPA would not have any incentive to join this GPA.** Against that background, any contracting authority or entity may, under the current *acquis communautaire*, rely on the principle of reciprocity to decide autonomously not to accept foreign bidders’ participation in its tenders when those are not covered by EU commitments under GPA or other international trade agreements. Whilst there is no corresponding obligation and Member States wishing to do so may waive such right, FIEC/ EIC/ EuDA firmly oppose the revised Proposal to the extent that it proposes to delete the possibility to close the market and to limit possible restrictive measures to price penalties.



Text COM(2016) 34 final	Amendment 75
<p>(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 individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators.</p>	<p>(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 individual contracting authorities or contracting entities maintain or adopt discriminatory practices against Union goods, services and economic operators. The Commission should also examine to what degree public authorities of a third country concerned take relevant measures to ensure compliance with obligations in the fields of international environmental, social and labour law provisions listed in Annex X to the Directive 2014/24/EU.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> as it is recognised in international trade law that discriminatory measures or practices against foreign market participants, in particular in the area of public procurement, cannot only derive from laws (“de jure discrimination”) but also and even more so from the actions and omissions of public authorities (“de facto discrimination”).</p>	

Text COM(2016) 34 final	Amendment 81
<p>(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.</p>	<p>(19) The Commission should be able, on its own initiative or at the request of interested parties, a contracting authority or a contracting entity of the EU 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.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> because it is normally the contracting authority/entity of the Member State which obtains early and first-hand information about the interest of a third country bidder in a given tender and, therefore, should have also an entitlement to apply to the European Commission.</p>	



Text COM(2016) 34 final	Amendment 87
<p>(22) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, the Commission should be able to adopt, where appropriate, price adjustment measure applying to tenders submitted by economic operators originating in that country and/or including goods and services originating in that country.</p>	<p>(22) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, the Commission should be able to adopt, where appropriate, measures limiting the access to the Union public procurement market applying to tenders submitted by economic operators originating in that country and/or including goods and services originating in that country.</p> <p>(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> as it would strengthen the European Commission’s negotiating position significantly during the consultations with the third country by being able to announce more effective and more powerful measures than (only) price penalties up to 20%. A more powerful Commission position during the consultations would help European economic operators.</p>	

Text COM(2016) 34 final	Amendment 89
	<p>(22 a) If the consultations with the country concerned do not lead to sufficient improvements to the tendering opportunities for Union economic operators, goods and services within a reasonable timeframe, contracting authorities should be able to exclude tenders submitted by economic operators owned or controlled directly or indirectly by the government of the third country concerned, including through significant funding and subsidies.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> as it would strengthen the European Commission’s negotiating position significantly during the consultations with the third country by being able to announce more effective and more powerful measures than (only) price penalties up to 20%. A more powerful Commission position during the consultations would help European economic operators.</p>	



Text COM(2016) 34 final	Amendment 90
<p>(23) Such measures should be applied only for the purpose of the evaluation of tenders comprising goods or services originating in the country concerned. To avoid circumvention of those measures, it may also be necessary to target certain foreign-controlled or owned legal persons that, although established in the European Union, are not engaged in substantive business operations that have a direct and effective link with the economy of at least one Member State. Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.</p>	<p>(23) Such measures may entail the mandatory exclusion of certain third-country goods and services from public procurement procedures in the European Union, or may subject tenders made up of goods or services originating in that country to a mandatory price. To avoid circumvention of those measures, it may also be necessary to target certain foreign-controlled or owned legal persons that, although established in the European Union, are not engaged in substantive business operations that have a direct and effective link with the economy of at least one Member State. Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> as it would strengthen the European Commission’s negotiating position significantly during the consultations with the third country by being able to announce more effective and more powerful measures than (only) price penalties up to 20%. A more powerful Commission position during the consultations would help European economic operators.</p>	

Text COM(2016) 34 final	Amendment 93
<p>(24) Price adjustment measures should not have a negative impact on on-going trade negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement, the Commission may suspend the measures during the negotiations.</p>	<p>deleted</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> as it would strengthen the European Commission’s negotiating position significantly during the consultations with the third country. By deleting the Recital, the European Commission better demonstrate its determination and resolve to improve the behaviour of the protectionist third country and would not be under a constant pressure to suspend the restrictive measures. A more powerful Commission position during the consultations would help European economic operators.</p>	



Text COM(2016) 34 final	Amendment 94
<p>(24) Price adjustment measures should not have a negative impact on on-going trade negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement, the Commission may suspend the measures during the negotiations.</p>	<p>(24) The Commission should be able to prevent the possible negative impact of an intended exclusion on on-going trade negotiations with the country concerned. Therefore, where a country is engaging in substantive negotiations with the Union concerning market access in the field of public procurement or concessions, and the Commission considers that there is a reasonable prospect of removing the restrictive procurement or concessions practices in the near future, the Commission should be able to adopt an implementing act to withdraw the restrictive measure adopted or suspend its application for a period of time.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote against this amendment</u> as it would weaken the European Commission’s negotiating position significantly during the consultations with the third country.</p> <p>With this Recital, the European Commission would presumably come under a constant pressure to suspend the restrictive measures. A less powerful Commission position during the consultations would be detrimental to European economic operators.</p>	



Text COM(2016) 34 final	Amendment 99
<p>(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, or where the application of the measure would lead to a disproportionate increase in the price or costs of the contract.</p>	<p>(27) It is imperative that contracting authorities and contracting entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities and contracting entities should be able not to apply price adjustment measures limiting access of non-covered goods and services in case there are no Union and/or covered goods or services available which meet the requirements of the contracting authority or contracting entity to safeguard essential public needs, for example in the fields of health and public safety, where the application of the measure would lead to a disproportionate increase in the price or costs of the contract, where the application of the measure would have negative effects due to the lack of effective competition for the execution of works, the supply of goods or the provision of services in a specific market or where the tender submitted by an economic operator originating in the third country concerned is the best tender in terms of qualitative criteria, as referred to in point (a) of the first paragraph of Article 67(2) of Directive 2014/24/EU.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote against this amendment.</u></p> <p>First of all the above-mentioned “Pelješac bridge” example shows that a state-owned enterprises from a third country may offer a politically motivated abnormally low tender price for a construction project which is below the actual cost incurred by a privately-run competitor. Therefore, the reference to “a disproportionate increase in the price of costs of the contract” is already too vague and much too open to interpretation. The European construction industry is particularly dependent on fair play in the public procurement market and, consequently, a competition with publicly subsidised third-country companies would end up in a disastrous race to the bottom, putting at risk both the social and environmental accomplishments of the European Union as well as millions of jobs in the European construction industry.</p> <p>Furthermore, the qualification that the contracting authority/entity should be able to deviate from price adjustment measures in case that the tender submitted by an economic operator originating in the third country concerned is the best tender in terms of qualitative criteria, as referred to in point (a) of the first paragraph of Article 67(2) of Directive 2014/24/EU assumes that such decision is always made in an objective manner, which is not necessarily the case. For instance, anecdotal evidence suggests that the Chinese consortium, which was awarded the “Pelješac bridge”, was rated with a maximum of 100 points out of 100!</p>	



Text COM(2016) 34 final	Amendment 108
<p>Article 1 – paragraph 5</p> <p>Member States and their contracting authorities and contracting entities shall not apply restrictive measures in respect of third country economic operators, goods and services beyond those provided for in this Regulation.</p>	<p>Article 1 – paragraph 5</p> <p>Member States and their contracting authorities and contracting entities shall not apply restrictive measures in respect of third country economic operators, goods and services beyond those provided for in this Regulation except those provided in Directives 2014/23/EU, 2014/24/EU or 2014/25/EU.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> because, evidently, economic operators must be subject also to Article 69 of the EU Procurement Directives. The European construction industry is particularly dependent on fair play in the public procurement market and it is saddening that still many contracting authorities/entities within the EU equal the “most economically advantageous bid” with the lowest price. Consequently, a competition with publicly subsidised third-country companies, being exempt from Article 69 of the EU Procurement Directive, would end up in a disastrous race to the bottom, putting at risk both the social and environmental accomplishments of the European Union as well as millions of jobs in the European construction industry.</p>	

Text COM(2016) 34 final	Amendment 118
<p>Chapter III - title</p> <p>Investigations, consultations and price adjustment measures</p>	<p>Chapter III - title</p> <p>Investigations, consultations, price adjustment measures and measures limiting access of non-covered goods and services to the Union public procurement and concessions market</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> in line with its previous observation that the limitation of possible restrictive measures to a proposed price adjustment measure is neither suitable to open foreign procurement markets nor to prevent unfair competition within the EU Internal Market. Moreover, it would strengthen the European Commission’s negotiating position significantly during the consultations with the third country by being able to announce more effective and more powerful measures than (only) price penalties. A more powerful Commission position during the consultations would help European economic operators.</p>	



Text COM(2016) 34 final	Amendment 120
<p>Article 6 – paragraph 1 – subparagraph 1</p> <p>Where the Commission considers it to be in the interest of the Union, it may at any time, on its own initiative or upon application of interested parties or a Member State, initiate an investigation into alleged restrictive and/or discriminatory procurement measures or practices.</p>	<p>Article 6 – paragraph 1 – subparagraph 1</p> <p>Where the Commission considers it to be in the interest of the Union, it may at any time, on its own initiative or at the request of interested parties, a contracting or awarding authority of the EU or a Member State, initiate an investigation into alleged restrictive and/or discriminatory procurement measures or practices.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> in line with its previous observation that it is normally the contracting authority/entity of the Member State which obtains early and first-hand information about the interest of a third country bidder are in a given tender and, therefore, should have also and entitlement to apply to the European Commission.</p>	

Text COM(2016) 34 final	Amendment 125
<p>Article 7 – paragraph 1 – subparagraph 1</p> <p>Where it is found as a result of an investigation that restrictive and/or discriminatory procurement measures or practices have been adopted or maintained by a third country and the Commission considers it to be in the Union interest, the Commission shall invite the country in question to enter into consultations. Those consultations shall aim at ensuring that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement or concession contracts in that country on conditions no less favourable than those accorded to national economic operators, goods and services of that country and also with a view to ensuring the application of the principles of transparency and equal treatment.</p>	<p>Article 7 – paragraph 1 – subparagraph 1</p> <p>Where it is found as a result of an investigation that restrictive and/or discriminatory procurement measures or practices have been adopted or maintained by a third country, the Commission shall invite the country in question to enter into consultations. Those consultations shall aim at ensuring that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement or concession contracts in that country on conditions no less favourable than those accorded to national economic operators, goods and services of that country and also with a view to ensuring the application of the principles of transparency and equal treatment.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> and holds the opinion that there is always a Union interest – regardless of the Commission’s consideration – where the European Commission has found that restrictive and/or discriminatory procurement measures or practices have been adopted or maintained by a third country. In such case, the European Commission should be obliged to invite the country in question to enter into consultations.</p>	



Text COM(2016) 34 final	Amendment 128
<p>Article 7 – paragraph 4</p> <p>Where, after the initiation of consultations, it appears that the most appropriate means to end a restrictive and/or discriminatory procurement measure or practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with Articles 207 and 218 of the Treaty on the Functioning of the European Union. While such negotiations are ongoing, the investigation may be suspended.</p>	<p>Article 7 – paragraph 4</p> <p>Where, after the initiation of consultations, it appears that the most appropriate means to end a restrictive and/or discriminatory procurement measure or practice is the conclusion of an international agreement, negotiations shall be carried out in accordance with Articles 207 and 218 of the Treaty on the Functioning of the European Union.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> as it strengthens the European Commission’s negotiating position significantly during the consultations with the third country. With the passage in question, the European Commission would presumably come under a constant pressure to suspend the investigation. A less powerful Commission position during the consultations would be detrimental to European economic operators.</p>	

Text COM(2016) 34 final	Amendment 130
<p>Article 7 – paragraph 5</p> <p>(a) Accession to the WTO Agreement on Government Procurement;</p>	<p>Article 7 – paragraph 5</p> <p>(a) Accession to the WTO Agreement on Government Procurement without substantial reservations;</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> based on the fact that the accession to the GPA can stretch over decades and develop in phases. China, for instance, does still not meet after fifteen years and six GPA accession offers, the expectations of GPA signatories. In the assessment of the EU Chamber of Commerce in China, the latest Chinese GPA offer is still limited to the procurement of goods, works and services conducted with fiscal funds by state organs, public institutions and social organisations (approximately 10% of the market). By contrast, it leaves out the procurement of large infrastructure and public utility projects, e.g. power generation and supply, sewage, water supply and public transportation (approximately 90% of the market) completely. The reason for the latter is a differentiation between “government procurement” and “government investment” in Chinese law.</p>	



Text COM(2016) 34 final	Amendment 132
<p data-bbox="181 423 504 456">Article 7 – paragraph 6</p> <p data-bbox="181 490 785 891">In the event that consultations with a third country do not lead to satisfactory results within 15 months from the day those consultations started, the Commission shall terminate the consultations and shall take appropriate action. In particular, the Commission may decide, by means of an implementing act, to impose a price adjustment measure, pursuant to Article 8. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 14(2).</p>	<p data-bbox="810 423 1129 456">Article 7 – paragraph 6</p> <p data-bbox="810 490 916 524"><u>deleted</u></p>
<p data-bbox="181 925 1388 1093"><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> and holds the opinion it shall not be at the discretion of the European Commission to impose a price adjustment or other restrictive measure in the event that consultations with a third country have not led to satisfactory results within 15 months. At least the word “may” must be replaced by the word “shall”.</p>	



Text COM(2016) 34 final	Amendment 136
<p>Article 8 – paragraph 1 – subparagraph 1</p> <p>Tenders more than 50 % of the total value of which is made of goods and/or services originating in a third country, may be subject to a price adjustment measure where the third country concerned adopts or maintains restrictive and/or discriminatory procurement measures or practices.</p>	<p>Article 8 – paragraph 1 – subparagraph 1</p> <p>Where it is found in an investigation pursuant to Article 6, and after following the procedure foreseen in Article 7, that discriminatory procurement measures or practices have been adopted or are maintained by the third country concerned, the Commission may adopt implementing acts to temporarily limit the access of tenders more than 50% of the total value of which is made of non-covered goods and/or services originating in the third country concerned for up to five years, which can be extended for another five years. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> and welcome the possibility to temporarily limit the access of tenders more than 50% of the total value of which is made of non-covered goods and/or services originating in the third country. As mentioned before, in the case of tenders for public works (construction), the option to impose price penalties may not be promising and in such cases the exclusion of tenders is the appropriate sanction.</p> <p>At the same time, FIEC/ EIC/ EuDA regret that the competency of individual contracting authorities to reject an offer from a third-county tenderer (“decentralised” procedure) has been deleted and any restrictive measure is now subject to an implementing decision by the European Commission. This “centralised” procedure unduly restricts the competency of individual contracting authorities to reject an offer from a third-county tenderer on the basis of the reciprocity principle enshrined in the GPA.</p>	



Text COM(2016) 34 final	Amendment 144
	<p>Article 8 – paragraph 1 – subparagraph 2a (new)</p> <p>The restrictive measures adopted pursuant to the first subparagraph may consist of:</p> <p>(a) the exclusion of tenders of which more than 50% of the total value is made up of non-covered goods or services originating in the country concerned; or</p> <p>(b) a mandatory price penalty of no less than 30% on that part of the tender consisting of non-covered goods or services which originate in the country concerned.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> and welcome the possibility to temporarily limit the access of tenders more than 50% of the total value of which is made of non-covered goods and/or services originating in the third country. As mentioned before, in the case of tenders for public works (construction), the option to impose price penalties - especially if it is limited to 20% - may not be promising and in such cases the exclusion of tenders is the appropriate sanction.</p>	

Text COM(2016) 34 final	Amendment 147
<p>Article 8 – paragraph 2 – introductory part</p> <p>The price adjustment measure shall specify the penalty of up to 20% to be calculated on the price of the tenders concerned. It shall also specify any restrictions to the scope of application of the measure, such as those related to:</p>	<p>Article 8 – paragraph 2 – introductory part</p> <p>The price adjustment measure shall specify the penalty of up to 30% to be calculated on the price of the tenders concerned. It shall also specify any restrictions to the scope of application of the measure, such as those related to:</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote against this amendment</u>, as a price adjustment of 30% may still be insufficient on individual projects to compensate for the disadvantages that privately-run European enterprises have in comparison to that state-owned enterprises from third countries. Hence, a limit of 30% is not appropriate in all cases.</p>	



Text COM(2016) 34 final	Amendment 150
<p>Article 8 a (new)</p>	<p style="text-align: center;">Article 8 a</p> <p style="text-align: center;">Measures limiting access of economic operators owned or controlled directly or indirectly by the government of the third country concerned to the Union public procurement market</p> <p>The Contracting authority may also exclude the access of economic operators owned or controlled directly or indirectly by the government of the third country concerned, including through significant funding and subsidies. The exclusion may apply to tenders submitted by economic operators owned or controlled directly or indirectly by the government of the third country concerned, unless these economic operators can demonstrate that less than 50% of the total value of their tender is made up of goods or services originating in that third country.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> because the distortion of competition between private and public construction enterprises is one of the greatest challenges for European contractors both in third countries and in the Internal Market. Regrettably, EU law does not provide for any trade-related defence instrument, which would tackle trade distortions in the services sector. This is due to the fact that the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures only apply to goods but not to services.</p> <p>To make matters worse, EU competition law itself does not provide any protection against a distortion of competition by state-owned companies from third countries, as the ban on distortive public subsidies set out in Article 107 et seq. of the EU Treaty only applies to EU companies but not to those from third countries, even if they work in the EU. Again, this is a paradox and here, too, FIEC/ EIC/ EuDA consider current EU law to be incoherent and directly disadvantageous to the European construction industry. All enterprises wishing to work in the EU should have to provide, without any discrimination, the same proof of absence of illegal stated aid or subsidies.</p>	



Text COM(2016) 34 final	Amendment 160
<p>Article 11 – paragraph 1 – point b – paragraph 3</p> <p>The price adjustment measure shall apply only for the purpose of the evaluation and ranking of the price component of the tenders. It shall not affect the price due to be paid under the contract which will be concluded with the successful tenderer.</p>	<p>Article 11 – paragraph 1 – point b – paragraph 3</p> <p>deleted</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote against this amendment</u> because a winning bidder should not have the possibility to recover additional money through the price adjustment mechanism. If the contracting authority/entity decides that it is an “abnormally low bid”, it shall be disqualified in line with Article 69 of the EU Procurement Directive.</p>	

Text COM(2016) 34 final	Amendment 169
<p>Article 12 a (new)</p>	<p>1 a. These exceptions shall not apply when the economic operator is owned or controlled directly or indirectly by the government of a third country, including through significant funding and subsidies.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> because the distortion of competition between private and public construction enterprises is one of the greatest challenges for European international contractors. Regrettably, EU law does not provide for any trade-related defence instrument, which would tackle trade distortions in the services sector. This is due to the fact that the WTO Agreements on Anti-Dumping and on Subsidies and Countervailing Measures only apply to goods but not to services. To make matters worse, EU competition law itself does not provide any protection against a distortion of competition by state-owned companies from third countries, as the ban on distortive public subsidies set out in Article 107 et seq. of the EU Treaty only applies to EU companies but not to those from third countries. Again, this is a paradox and here, too, FIEC/ EIC/ EuDA consider current EU law to be incoherent and directly disadvantageous to the European construction industry. All enterprises wishing to work in the EU should have to provide, without any discrimination, the same proof of absence of illegal stated aid or subsidies.</p>	



Text COM(2016) 34 final	Amendment 171
<p>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.</p>	<p>At least every three years after the entry into force of this Regulation, 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. When the Commission submits its second report, it shall also submit to the European Parliament and to the Council a legislative proposal to amend this Regulation or set out the reasons why, in its view, no changes are necessary. Should the Commission not comply with its obligations, this Regulation shall cease to apply at the end of the second year following the submission of the second report.</p>
<p><u>FIEC/ EIC/ EuDA recommend to vote in favour of this amendment</u> in the light of our general assessment that the proposed draft Regulation, in particular in its amended version, will not help opening third-country procurement markets for European companies but it will it achieve exactly the opposite and open the European procurement market completely for third country bidders. Therefore, we appreciate some kind of “sunset clause” if it becomes obvious – and that is our prediction - that the added value of the proposed Regulation has been an erroneous belief by the European Commission.</p>	

Please do not hesitate to contact us for any further information that you may require.

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In a nutshell

FIEC/ EIC/ EuDA Voting recommendations on the "IPI" (Caspary Report), 2012/0060(COD)

AM	MEPs	FIEC/ EIC/ EuDA recommendation	
		in favour	against
66	Emma McClarkin	in favour	
67	Christofer Fjellner	in favour	
Only if INTA does <u>not</u> adopt AM 66/ 67:			
70	Viviane Reding	in favour	
73	Daniel Caspary	in favour	
79	Yannick Jadot	in favour	
85	Tiziana Beghin	in favour	
87	Yannick Jadot	in favour	
88	Tiziana Beghin	in favour	
91	Tiziana Beghin	in favour	
92	Yannick Jadot	in favour	
97	Tiziana Beghin		against
106	Yannick Jadot	in favour	
116	Emma McClarkin	in favour	
118	Inmaculada Rodríguez-Piñero Fernández	in favour	
123	Tiziana Beghin	in favour	
126	Patricia Lalonde	in favour	
128	Patricia Lalonde	in favour	
130	Patricia Lalonde	in favour	
134	Viviane Reding	in favour	
142	Tiziana Beghin	in favour	
145	Tiziana Beghin		against
148	Daniel Caspary	in favour	
158	Tiziana Beghin		against
167	Emma McClarkin	in favour	
169	Inmaculada Rodríguez-Piñero Fernández	in favour	

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