



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Employment and Social Affairs

2012/0060(COD)

24.6.2013

OPINION

of the Committee on Employment and Social Affairs

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(2012)0124 – C7-0084/2012 – 2012/0060(COD))

Rapporteur: Tamás Deutsch

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AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on International Trade, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Article 21 of the Treaty on European Union provides that the Union is to define and pursue common policies and actions, and work for a high degree of 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) Article 21 of the Treaty on European Union provides that the Union is to define and pursue common policies and actions, and work for a high degree of 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; ***pursuant to the same article the Union should promote democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and the respect for the principles of the United Nations Charter and international law; the cooperation in the field of international relations should serve to foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty.***

Amendment 2

Proposal for a regulation

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) European Union trade policy should help to reduce poverty worldwide by promoting improved working conditions, health and safety at work and fundamental rights.

Amendment 3

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The EU should not put pressure on third countries in order to push them to privatize public services. Public authorities at all levels should have the right to decide whether, how and to what extent they want to provide public services themselves.

Amendment 4

Proposal for a regulation

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Public contracts should not be awarded to economic operators that have participated in a criminal organisation, in exploitation of human trafficking and child labour.

Amendment 5

Proposal for a regulation

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Such exclusion should not be made on the basis of the introduction by third countries of sustainable development objectives in their public procurement. Such objectives should be encouraged.

Amendment 6

Proposal for a regulation

Recital 15

Text proposed by the Commission

Amendment

(15) For contracts with an estimated value equal or above EUR 5.000.000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the goods and/or services originate contains, for the goods and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of substantial reciprocity should be presumed where restrictive procurement measures result in serious and recurring discriminations of EU economic operators, goods and services.

(15) For contracts with an estimated value equal or above EUR 5.000.000 the Commission should approve the intended exclusion if the international agreement concerning market access in the field of public procurement between the Union and the country where the goods and/or services originate contains, for the goods and/or services for which the exclusion is proposed, explicit market access reservations taken by the Union. Where such an agreement does not exist, the Commission should approve the exclusion where the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned. A lack of substantial reciprocity should be presumed where restrictive procurement measures result in serious and recurring discriminations of EU economic operators, goods and services, ***or paramount economic interests of the Union are at stake, for instance in the field of industry. In the case of serious and repeated violations in the field of fundamental workers' rights, trade unions rights and international law, including fundamental international conventions in the field of labour, social and environmental law,***

such as ILO Convention No. 94 on labour clauses in public procurement, the Commission should equally consider a restriction of market access for the concerned goods and/or services.

Amendment 7

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine to what degree public procurement laws 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 public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operators.

Amendment

(16) When assessing whether a lack of substantial reciprocity exists, the Commission should examine to what degree public procurement laws 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 public authorities and/or individual procuring entities maintain or adopt discriminatory practices against Union goods, services and economic operators, *or jeopardizes the economic interests of the Union for instance in the field of industry.*

Amendment 8

Proposal for a regulation

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The respect of social, labour and environmental law applicable in the place of work in a third country, including the respect of fundamental international agreements, such as ILO Convention No. 94, should not be seen as discriminatory

practice.

Amendment 9

Proposal for a regulation Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) Measures limiting the market access of third countries should not have disproportionate negative impacts on the social and labour situation in the country concerned, in particular in case of developing countries.

Amendment 10

Proposal for a regulation Recital 19

Text proposed by the Commission

Amendment

(19) In view of the greater difficulty for contracting authorities/entities to assess, in the context of 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, the explanations of tenderers it is appropriate to provide for an increased transparency in the treatment of abnormally low tenders. In addition to the rules provided by Article 69 of the Directive on public procurement and Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors the contracting authority/entity that intends to accept such an abnormally low tender, should inform the other tenderers of this in writing including the reasons for the abnormally low character of the price or

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costs charged. This allows these tenderers to contribute to a more accurate assessment as to whether the successful tenderer will be able to fully perform the contract under the conditions spelled out in the tender documentation. Therefore, this additional information would achieve a more level playing field on the EU public procurement market.

costs charged. ***Special attention should be paid to the respect of international labour, social and environmental law, including fundamental international conventions, such as ILO Convention No. 94.*** This allows these tenderers to contribute to a more accurate assessment as to whether the successful tenderer will be able to fully perform the contract under the conditions spelled out in the tender documentation. Therefore, this additional information would achieve a more level playing field on the EU public procurement market.

Amendment 11

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) Where the Commission has, on the basis of information available to it, reason to believe that a third country has adopted or maintains a restrictive procurement practice, it should be able to start an investigation. If the existence of a restrictive procurement 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 economic operators, goods and services in public procurement in that country.

Amendment

(21) Where the Commission has, on the basis of information available to it, reason to believe that a third country has adopted or maintains a restrictive procurement practice ***or continues to violate fundamental workers' rights and international law, including fundamental international conventions in the field of labour, social and environmental law, including ILO Convention No. 94,*** it should be able to start an investigation. If the existence of a restrictive procurement practice ***or of the above mentioned violations*** 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 economic operators, goods and services in public procurement in that country.

Amendment 12

Proposal for a regulation Recital 23

Text proposed by the Commission

(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 penalty. To avoid circumvention of these measures, it may also be necessary to exclude certain foreign-controlled or owned juridical persons established in the European Union, that are not engaged in substantive business operations such that it has a direct and effective link with the economy of a Member State concerned. Appropriate measures should not be disproportionate to the restrictive procurement practices to which they respond.

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Amendment 13

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) It is imperative that contracting authorities/entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities/entities should be able to set aside measures limiting access of non-covered goods and services in case there

Amendment

(24) It is imperative that contracting authorities/entities have access to a range of high-quality products meeting their purchasing requirements at a competitive price. Therefore contracting authorities/entities should be able to set aside 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/entity to safeguard essential public needs for example health and public safety, or application of the measure would lead to a disproportionate increase in the price or costs of the contract.

are no Union and/or covered goods or services available which meet the requirements of the contracting authority/entity to safeguard essential public needs for example health and public safety, ***including social and environmental sustainability characteristics***, or application of the measure would lead to a disproportionate increase in the price or costs of the contract.

Amendment 14

Proposal for a regulation

Article 6 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Sustainable development criteria, environment policy and social criteria that support working conditions, health and safety at work and equal treatment shall also be taken into account in relation to the award of public contracts. Such criteria shall be favoured and shall on no account be considered a reason for exclusion.

Amendment 15

Proposal for a regulation

Article 6 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Contracting authorities/entities shall require tenderers to provide information on the origin of the goods and/or services contained in the tender, and their value. They shall accept self-declarations as preliminary evidence that tenders cannot be excluded pursuant to paragraph 1. A contracting authority may ask a tenderer at any moment during the procedure to

Contracting authorities/entities shall require tenderers to provide information on the origin of the goods and/or services contained in the tender, and their value. ***Criteria relating to fundamental workers' rights and international law, including fundamental internationally recognized international conventions, in the field of labour, social and environmental law***

submit all or parts of the required documentation where this appears necessary to ensure the proper conduct of the procedure. The Commission may adopt implementing acts establishing standard forms for declarations concerning the origin of goods and services. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 17 (3).

shall also be taken into account. They shall accept self-declarations as preliminary evidence that tenders cannot be excluded pursuant to paragraph 1. A contracting authority may ask a tenderer at any moment during the procedure to submit all or parts of the required documentation where this appears necessary to ensure the proper conduct of the procedure. The Commission may adopt implementing acts establishing standard forms for declarations concerning the origin of goods and services. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 17 (3).

Amendment 16

Proposal for a regulation

Article 6 – paragraph 2 – subparagraph 4 – point d a (new)

Text proposed by the Commission

Amendment

(da) main reasons for the exclusion of goods and/or services.

Amendment 17

Proposal for a regulation

Article 6 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) where an agreement referred to in point (a) does not exist and the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned.

(b) where an agreement referred to in point (a) does not exist and the third country maintains restrictive procurement measures leading to a lack of substantial reciprocity in market opening between the Union and the third country concerned, ***notably where those restrictive measures are detrimental to the economic interest of the Union, such as its industry.***

Amendment 18

Proposal for a regulation

Article 6 – paragraph 4 – point b a (new)

Text proposed by the Commission

Amendment

(ba) where there is evidence of serious and repeated violations in the field of fundamental workers' rights and international law in the field of labour, social and environmental law, including fundamental internationally recognized international conventions. The respect of social, labour and environmental law applicable in the place of work in the country concerned shall not be considered as a restrictive procurement measure resulting in serious and recurring discriminations of Union economic operators, goods and services.

Amendment 19

Proposal for a regulation

Article 6 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. When assessing whether there is evidence of serious and repeated violations in the field of fundamental workers' rights and international law in the field of labour, social and environmental law, including fundamental internationally recognized international conventions, the Commission shall examine to what degree:

(a) laws and practices in the country concerned ensure the respect of fundamental workers' rights and international law in the field of labour, social and environmental law;

(b) public authorities and/or individual procuring entities maintain or adopt social dumping practices on the concerned goods and services.

Amendment 20

Proposal for a regulation Article 6 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. The impact of trade negotiations on social, environmental and human rights shall be regularly assessed with special attention to promoting decent work and combating structural unemployment. Environment and social policy aspects shall be taken into account when awarding public contracts, the selection criterion of which shall not be the lowest price but the most sustainable tender.

Amendment 21

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. Where the contracting authority/entity intends, under Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low

1. Where the contracting authority/entity intends, under Article 69 of the Directive on public procurement or under Article 79 of the Directive on procurement by entities operating in the water, energy, transport and postal services sectors, after verifying the explanations of the tenderer, to accept an abnormally low tender comprising goods and/or services originating outside the Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of the goods or services constituting the tender, it shall inform the other tenderers of this in writing, including the reasons for the abnormally low

character of the price or costs charged.

character of the price or costs charged,
*referring in particular to the respect of
fundamental workers' rights and
international law, including fundamental
internationally recognized international
conventions in the field of labour, social
and environmental law, notably to avoid
any social or environmental or taxation
dumping.*

Amendment 22

Proposal for a regulation

Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

*2a. Rules on health and safety at work,
working conditions and collective
agreements in particular shall also be
complied with in the case of abnormally
low tenders.*

Amendment 23

Proposal for a regulation

Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

*3a. The Commission shall not penalise
third countries which introduce
sustainable development objectives in
their award criteria; on the contrary,
these measures shall be encouraged.*

Amendment 24

Proposal for a regulation

Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

When it is found as a result of an

When it is found as a result of an

investigation that restrictive procurement measures are maintained by a third country and the Commission considers it to be justified by the EU interest, the Commission shall invite it to enter into consultations with a view to ensuring that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement contracts in that country on the conditions no less favourable than those accorded to national economic operators, goods and services of that country and also with a view also to ensuring the application of the principles of transparency and equal treatment.

investigation that restrictive procurement measures *or violations regarding the respect of fundamental workers' rights and international law, including fundamental internationally recognized international conventions in the field of labour, social and environmental law*, are maintained by a third country and the Commission considers it to be justified by the EU interest, the Commission shall invite it to enter into consultations with a view to ensuring that Union economic operators, goods and services can participate in tendering procedures for the award of public procurement contracts in that country on the conditions no less favourable than those accorded to national economic operators, goods and services of that country and also with a view also to ensuring the application of the principles of transparency and equal treatment.

Amendment 25

Proposal for a regulation

Article 9 – paragraph 5 – point c a (new)

Text proposed by the Commission

Amendment

(ca) respect of internationally recognised social and labour norms and/or law or environmental law;

Amendment 26

Proposal for a regulation

Article 9 – paragraph 5 – point c b (new)

Text proposed by the Commission

Amendment

(cb) respect of internationally recognised human rights.

Amendment 27

Proposal for a regulation

Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission may also terminate the consultation if the country concerned respects fundamental workers' rights and international law, including fundamental internationally recognized international conventions in the field of labour, social and environmental law.

Amendment 28

Proposal for a regulation

Article 10 – paragraph 1

Text proposed by the Commission

Amendment

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country as referred to in Article 6, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

1. Where it is found in an investigation pursuant to Article 8, and after following the procedure foreseen in Article 9, that restrictive procurement measures adopted or maintained by that third country leads to an lack of substantial reciprocity in market opening between the Union and the third country ***or the non-respect of fundamental workers' rights and international law, including fundamental internationally recognized international conventions in the field of labour, social and environmental law*** as referred to in Article 6, the Commission may adopt implementing acts to temporarily limit the access of non-covered goods and services originating in a third country. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17(2).

Amendment 29

Proposal for a regulation

Article 10 – paragraph 2 – point a

Text proposed by the Commission

(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 adopting or maintaining a restrictive procurement practice; and/or

Amendment

(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 adopting or maintaining a restrictive procurement practice ***and/or concerned by the non-respect of fundamental workers' rights and international law, including fundamental internationally recognized international conventions, in the field of labour, social and environmental law***; and/or

Amendment 30

Proposal for a regulation

Article 10 – paragraph 2 – point b

Text proposed by the Commission

(b) a mandatory price penalty on that part of the tender consisting of non-covered goods or services which originate in the country adopting or maintaining a restrictive procurement practice.

Amendment

(b) a mandatory price penalty on that part of the tender consisting of non-covered goods or services which originate in the country adopting or maintaining a restrictive procurement practice ***and/or concerned by the non-respect of fundamental workers' rights and international law, including fundamental internationally recognized international conventions in the field of labour, social and environmental law***.

Amendment 31

Proposal for a regulation

Article 10 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Measures limiting the market access of third countries shall be proportionate and shall not have disproportionate

negative impacts on the country concerned, in particular in case of developing countries, but shall be rather designed to foster the local social and labour situation.

PROCEDURE

Title	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		
References	COM(2012)0124 – C7-0084/2012 – 2012/0060(COD)		
Committee responsible Date announced in plenary	INTA 20.4.2012		
Opinion by Date announced in plenary	EMPL 20.4.2012		
Rapporteur Date appointed	Tamás Deutsch 24.5.2013		
Discussed in committee	20.3.2013	29.5.2013	19.6.2013
Date adopted	20.6.2013		
Result of final vote	+: -: 0:	34 7 3	
Members present for the final vote	Regina Bastos, Edit Bauer, Heinz K. Becker, Jean-Luc Bennahmias, Phil Bennion, Pervenche Berès, Philippe Boulland, Milan Cabrnoch, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Marije Cornelissen, Emer Costello, Frédéric Daerden, Karima Delli, Sari Essayah, Richard Falbr, Thomas Händel, Roger Helmer, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Martin Kastler, Jean Lambert, Verónica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Csaba Öry, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Traian Ungureanu, Inês Cristina Zuber		
Substitute(s) present for the final vote	Georges Bach, Kinga Göncz, Sergio Gutiérrez Prieto, Jelko Kacin, Jan Kozłowski, Ria Oomen-Ruijten, Birgit Sippel		
Substitute(s) under Rule 187(2) present for the final vote	Jorgo Chatzimarkakis, Jürgen Klute		