INTA public hearing on

"Improving access to public procurement markets:

Opportunities and risks of the EU instrument"

20/02/2013

Remarks and questions to the attention of MEPs

By FIEC, the European Construction Industry Federation

General questions:

- **Art. 7 on Abnormally Low Tenders (ALTs)** definitely needs to be reinforced in order to ensure a level playing field between companies submitting "covered" or "non-covered" tenders, that is basically, to ensure that companies submitting "non-covered" tenders also respect all EU rules (environmental, social, State aid, etc.).
  For now, FIEC considers that this provision is highly insufficient and believes that it would have been better to have a general transversal strengthened rule for this purpose in the public procurement directives.
  Considering the seemingly upcoming watering down of general ALT provisions in the above-mentioned public procurement directives, the provisions on – the identification and rejection of – ALTs need to be reinforced in the present regulation.
- Why are the **legal studies of the legal services of the European Commission (from 2006 and 2012)** on this proposal not made publically available? Is there something to hide?
- Art. 6 par. 3: If there is no decision from the Commission within the defined time period, the exclusion should be deemed to have been **approved** by the Commission!
- Are there possibilities of **remedies** against the Commission's inaction or other decisions? i.e. a possibility for Member States and/or companies to challenge the Commission's decision/inaction? (as it is possible in the case of anti-dumping procedures for goods)
- **Access to third countries' markets should be considered in a broader perspective**: not only in the perspective of the draft regulation on public procurement but also regarding access to direct investment, treatment of State aided/State-owned companies, protection of IPR, etc.

Regarding the study undertaken by Stephen Woolcock[1]:

- As mentioned in the study, there are 15 current signatories to the GPA, including the EU 27 as one. **So, why should the European Commission have the overall control over the two procedures proposed (decentralised, art. 6 and centralised, art. 8 to 10), while international Treaties are signed in the names of the 27 Member States (rather than by the Commission itself)?**
- It is pointed out in the study that the Commission's definition of reciprocity in this draft Regulation is narrower than the WTO GPA general acceptance...
  Is it possible to elaborate a bit on that?

[1] Study on "Public procurement in international trade », by Stephen Woolcock, available on: http://www.europarl.europa.eu/committees/en/inta/studiesdownload.html?languageDocument=EN&file=78631

- It is mentioned in the study that the centralised procedure of art. 8 to 10 can be launched at the instigation of the EU “or of third-parties or of a Member State”. This might be true, but the Commission keeps all discretionary powers to initiate this investigation, “where it considers it to be in the interest of the Union”, which is a very vague criterion! Hence, there is no possibility to force the Commission to act by submission of a substantiated dossier, as it is the case in anti-dumping procedures.

  Does Mr. Woolcock have any comment on that?

- In the conclusions, it is mentioned regarding the cost effectiveness of the draft Regulation that the EU purchasers and thus taxpayers will be paying more for the goods and services if there is a reduction in competition.

  First of all, the issue is not whether to reduce competition, but whether to increase it further. Would it not be counterproductive for numerous policies decided by the EU legislator to facilitate market access for companies who do not respect the EU environmental and social rules?

  Beyond the supposed reduction of the competition, which is no proven fact, question is also whether the EU wants to provide cheap or sustainable and qualitative works, services and goods to its citizens.

- In the conclusions, it is pointed out that there will be retaliation against EU’s exports.

  While this is no proven fact, question is whether an industrial sector such as construction, which provides solutions for today’s global challenges, should be sacrificed? Should the EU construction sector, representing about 10% of EU GDP and being mostly a local and non-relocatable business providing direct jobs for about 15 million people, be sacrificed on the altar of unilaterally open trade?

- The study also points out that there are specific problems created by national champions’ policies pursued by other countries based on preferential public procurement. According to the author, the Regulation is therefore justified on grounds that the EU industries concerned (“such as railway equipment and construction) must have equivalent access to opportunities on other major markets. And he concludes that the Regulation should hence be used in cases of clear offensive national champion strategies.

  In these conditions, could we think of a more targeted Regulation, specifically addressing this problem and these industries?