



EuDA/ FIEC/ EIC joint submission on the FSR procedural rules (draft Implementing Regulation)

The European Construction Industry, represented by FIEC (European Construction Industry Federation), EIC (European International Contractors) and EuDA (European Dredging Association), hereby submit their comments on the draft Implementing Regulation of the Foreign Subsidies Regulation (FSR).

The European contractors welcome the FSR as it is designed to fill the legislative gap whereby European companies are reversely discriminated against, as EU State Aid regulations only apply to EU Member States subsidies and not to subsidies from non-EU countries.

The majority, if not all, of the construction contractors' projects concern budgets well below the (still too high) thresholds and are not covered by the notification procedures of the FSR. The *ex officio* procedure would offer some possibilities for the European construction companies to re-level the playing field, but action (e.g. a market investigation) will remain at the discretion of the Commission.

A quite wide legislative gap will remain for the construction contractors. And we would like to urge the Commission to present the draft implementation regulation for the *ex officio* procedure in a very near future.

Looking at the notification requirements, it is quite clear that the requested information is accessible and available to the subsidised companies that need to notify the Commission. However, this information is often impossible to find for their (private European) competitors which do not have the Commission's investigative powers and rights to obtain confidential documents which would provide evidence of the subsidy's form, source and purpose. The benefit of the subsidy for the non-EU recipient company would usually translate in an unduly advantageous tender in a publicly procured construction project. This is why our sectors still request the reversing of the burden of proof in cases involving subsidised companies from non-EU countries that do not have Market Economy Status, that are not signatory of the GPA agreement nor of an FTA with the EU.

Finally, the balancing test is supposed to balance the overall positive and negative impacts of the award of a public tender to a subsidised entity. Therefore, all negative impacts, other than the subsidy's, should also be taken in the balance against all possible positive impacts.



FIEC (European Construction Industry Federation) represents via its 32 national Member Federations in 27 countries (24 EU, Norway, Switzerland and Ukraine) 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 2017, the international turnover of companies associated with EIC's Member Federations amounted to more than 175 billion €.

EuDA (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.