



27 May 2016

Progress report of FICIL's recommendations on Public procurement

1. Assessment of the current situation and retrospect to the progress achieved

Public procurement is an essential component of every European Union member-state's economy. The European Commission has calculated that European Union member-states, including Latvia, spend approximately 19% of GDP on public procurement.

Considering the share of the economy accounted for by public procurement, further positive growth of the state economy hinges on public procurement in accordance with public procurement principles specified by the European Union (i.e. transparency, non-discrimination, equal treatment, mutual respect, and proportionality), as well as the goals specified in Section 2 of the Draft Public Procurement Law (hereinafter referred to as PPL) and Section 2 of the Draft Law on the Procurement of Public Service Providers (hereinafter referred to as LPPSP):

1. ensuring transparency of the procurement procedure;
2. ensuring free competition among suppliers, as well as an equal and fair treatment to them;
3. ensuring efficient allocation of the assets of the state, municipal governments, and public service providers.

Considerable changes to both the laws were proposed in the Foreign Investors Council in Latvia's (hereinafter referred to as FICIL) Position Papers on suggestions to amend the regulations on Public Procurement in 2013 and 2011 with the aim to consequently improve the business environment in Latvia and contribute to reducing the proportion of the shadow economy. Close to the half of the suggestions were implemented in the laws and regulations.

2. Executive summary

Having reviewed the draft laws, which will replace the PPL and the LPPSP and implement Directive 2014/25/ES (26/02/2014), FICIL would like to make its suggestions and underscore the following aspects of the public procurement system in Latvia:

- 1) Adoption process of the draft PPL and LPPSP.
- 2) Effective implementation of legal protection mechanisms for appeal of the decisions made within the framework of "below the contract price threshold".

3. Recommendations

3.1. Adoption process of the draft PPL and LPPSP.

The deadline for implementing the Directive is 18 April 2016 (except some specific items, such as electronic procurement, which should be implemented by 18 October 2018), therefore the government is suggesting applying the accelerated procedure for adopting the draft PPL and LPPSP.

According to FICIL members, the suggestions for the draft laws are based on the current experience of the persons applying the law and therefore goes into detail. *Inter alia* the suggestions relate to the administrative burden for foreign investors to participate in the tenders.

Taking into account the significance of these draft laws and the number of stake holders involved FICIL is of the opinion that the adoption of the draft laws in the accelerated procedure will exclude the observation of all the relevant suggestions and necessary discussions of the interested parties. Therefore, FICIL proposes not to apply the accelerated procedure for adoption of draft PPL and LPPSP.

3.2. Effective implementation of legal protection mechanisms to appeal of the decisions made

FICIL notes that ensuring a quick and efficient mechanism for legal protection is one of the hallmarks of a democratic state. Likewise, the broadest possible access to judicial authority would promote the public trust in subjects of public governance, as the legality of the decisions they make would be subject to evaluation and review.

FICIL suggested in its Position paper (2013) amending (updating) the LPPSP, specifying that a bidder who submits an offer for “below threshold” procurement and believes that their rights have been or might be infringed upon, is entitled to contest decisions with the Administrative District Court, in accordance with the procedure specified in the Administrative Procedure Law. The decision of the Administrative District Court can be appealed through cassation with the Administrative Case Department of the Supreme Court Senate. Taking into account that this amendment was not accepted and the draft laws now propose to increase the thresholds for not applying the procurement procedures, the introduction of the appeal procedure is significant.

FICIL suggests including a regulation in the draft laws specifying an effective appeal process for “below-threshold” procurements conducted by a public service provider and within the public procurement process as such.