



EuDA/ FIEC/ EIC joint Policy Paper

Arguing the Case for a

TDI for Construction Services

Executive Summary

As they represent nowadays 65% of all trade, it is hard to deny that not enough attention is paid to Services : indeed, so far, there are no effective instruments against dumping or subsidies in trade in services. Stakeholders and the Union itself recognised that there are gaps in both WTO and EU law.

This position paper wants to address and put forward Trade Defence Instruments (TDI) for Construction Services as a solution to fill the gap in EU law.

The paper highlights the 6 key characteristics for a solution to be effective, the instrument should be a tool:

- a administered and operated at European level;*
- b that covers public procurement and private business;*
- c that covers dumping and subsidies by foreign service providers;*
- d with which private business can take the initiative;*
- e that is sector specific;*
- f that applies to non-covered and covered services.*

The paper also identifies the legal basis for such an instrument (TFEU Art.207 §2 & GATS Art. XIV) and proposes redressive measures (e.g. exclusion).



FIEC (European Construction Industry Federation) represents via its 32 national Member Federations in 28 countries (25 EU, Norway, Ukraine 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 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.



1. The European Union has recently considerably modernised its toolbox for combatting unfair competition in its Internal Market. This comes to no surprise. Since early 2019 a number of reports were published on the growing competition with China which is judged upon as unfair.

2. The BDI (Bundesverband der Deutschen Industrie) published in January 2019 an important paper on China¹ which was qualified as "Partner and systemic competitor". The acquisition by a Chinese company of Kuka, a German high-tech jewel, was the trigger for the change of direction of the BDI toward a more critical approach of China. The proposed actions would apply equally to all foreign players within the Internal Market.

Under the topic "Prevent dumping of services" it is stipulated that "So far, there are no effective instruments against dumping in trade in services. There are gaps in both WTO and EU law. Although the EU Commission has made it possible to take labour and environmental standards into account in the methodological renewal of the basic anti-dumping regulation, it is questionable to what extent this can be used to tackle distortions of competition in the increasingly important service sector. **The creation of new instruments should be considered here.**"

3. Soon after - in March 2019 - the EU Commission and the High Rep published a contribution to the European Council "EU-China-A strategic outlook"² where China was qualified "a systemic rival", marking that "there is growing appreciation in Europe that the balance of challenges and opportunities presented by China shifted". Therefore, rebalancing was needed and 10 actions were proposed. These represented the guidelines for further action of the EU.

Action 6 calls for promoting reciprocity and opening up procurement opportunities in China, asking the European Parliament and the Council to adopt the International Procurement Instrument (IPI) before the end of 2019. We are approaching the end of 2020 without an agreement between Parliament, Council and Commission. BusinessEurope made a number of interesting remarks on the whereabouts of IPI (May 2020)³. In the chapter on its Scope, BusinessEurope stated **that also for services not addressed in the context of the IPI (that is restricted to non-covered services), action has to be taken.**

¹ BDI Policy Paper China, "Partner and Systemic Competitor – How we deal with China's State-Controlled Economy", January 2019, BDI Document D 1009

² EU-China – A strategic outlook, Joint Communication to the EP, the European Council and the Council, March 12, 2019; JOIN(2019) 5 Final

³ BusinessEurope's views on an International Procurement Instrument, Draft Position Paper, 11 May 2020.



Action 7 refers to the Public Procurement and Award Directives⁴ which make it possible not only to take price but also high levels of labour and environmental standards into account when awarding a public procurement contract or concession. **But it is up to the Member States to evaluate and decide on this.** The practice is very different from one Member State to another. Therefore, the Commission will publish guidance on abnormally low tenders⁵, as well as respect of security, labour and environmental standards, and state aid rules. As these are Directives that's about everything the Commission can do.

With respect to Action 8, the European Commission has published a White Paper on levelling the playing field as regards foreign subsidies⁶, building on a proposal by the Netherlands in this respect. The proposals are encompassing as far as subsidies are concerned **but remain silent on dumping** which is understandable since the initiative comes from DG Competition. This explains as well that **the classic distinction between goods and services is lacking.** The focus is on undertakings and public procurement procedures.

4. March 2019 the Screening Regulation⁷ was adopted and entered into force in April 2019. It foresaw an implementation period of 18 months leading to October 2020. The Screening Regulation empowers the Commission to screen an investment by a third country if the envisaged acquisition poses a threat to the security or public order of more than one Member State or an EU project such as Galileo, for example. It is an interesting initiative but it is limited in its scope as the Commission can only deliver an opinion. **The screening regulation has no teeth.** The decision to oppose an investment stays with the Member States of which only 14 have a national mechanism to do so. Linking the screening regulation with the White Paper on levelling the playing field as regards foreign subsidies in its Module 2, could result in an operative system at EU level whereby whenever subsidies by third countries are proven, automatically Module 2 is put in action as well, including its redressive measures. But it is doubtful that so soon after the Screening Regulation was adopted, the Member States will be ready to take this additional step.

⁴ Directive 2014/24/EU on Public Procurement (<http://data.europa.eu/eli/dir/2014/24/oj>) - Directive 2014/25/EU on Procurement by entities operating in the water, energy, transport and postal services sectors (<http://data.europa.eu/eli/dir/2014/25/oj>) - Directive 2014/23/EU on the award of Concession contracts (<http://data.europa.eu/eli/dir/2014/23/oj>).

⁵ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0813\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019XC0813(01)&from=EN).

⁶ White Paper of the European Commission on levelling the playing field as regards foreign subsidies, 17 June 2020, COM(2020)253 final.

⁷ Regulation (EU) 2019/452 of the EP and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (<http://data.europa.eu/eli/reg/2019/452/oj>).



5. Just now the Trilogue has reached an agreement on the amendment of the Trade Enforcement Regulation which gives the Commission the power to impose countermeasures also when there is a blockage of a dispute settlement, notably in the WTO as a result of the refusal by the USA to nominate arbitrators to the Appellate Body. Interesting to note, the amendment to the Trade Enforcement Regulation **extends the scope of possible countermeasures to services, taking stock of the increasing importance of services in the deep and comprehensive FTA's**⁸.

6. Recently (April 2019) Parliament and Council adopted a Regulation on safeguarding competition in air transport⁹, which has a TDI like approach. Complaints can be lodged by a Member State or a Union air carrier or Association of Union air carriers which should be addressed by the Commission within a reasonable time. Redressive measures can be taken to offset the injury as a result of practices distorting competition. These can take the form of financial duties or other measures representing a pecuniary value. **Air transport is a non-covered service under the GATS.** Back in 1986 the EU adopted a similar Regulation with respect to maritime transport, which is also a non-covered service¹⁰.

7. As a conclusion, it is **hard to deny that not enough attention is paid to trade in services** owing to the fact that services represent nowadays 65% of all trade. There are a number of historical and institutional explanations for this, which this position paper wants to address and put forward solutions for to fill the gap that is recognised by stakeholders and the Union itself.

8. To fill the existing gaps the new tool should have the following characteristics :

a) **It should be a tool that is administered and operated at European level**, as it is the case with the existing TDI for goods. If applying and sanctioning is left to the discretion of the Member States it remains dead letter. See what happens with the additional conditions that a Member State can decide under the procurement directives. Member States have very different

⁸ <https://www.consilium.europa.eu/en/press/press-releases/2020/10/28/trade-eu-reaches-political-agreement-on-updated-enforcement-regulation/>.

⁹ Regulation (EU) 2019/712 of the EP and of the Council of 17 April 2019 on safeguarding competition in air transport, and repealing Regulation (EC) 868/2004 (<http://data.europa.eu/eli/reg/2019/712/oj>).

¹⁰ Council Regulation (EEC) 4057/86 of 22 December 1986 on unfair practices in maritime transport, (<http://data.europa.eu/eli/reg/1986/4057/corrigendum/1988-05-05/2/oj>).



ideas about this which results in differing application or no application at all. The 16+1 format explains a lot in this respect.

b) **It should be a tool that covers public procurement and private business.** The present toolbox for services is limited to public procurement. One sees that public procurement is sometimes masked as a private deal to avoid possible sanctioning.

c) **It should cover price discrimination by foreign service providers ("anti-dumping") and the fact that foreign service providers may have received huge subsidies ("anti-subsidies")** as is the case with the existing TDI for goods. Up to 80% of the cases, are sanctioned on the basis of dumping, but subsidies are part of the mechanisms that result in dumping. There is no reason to dissociate as the experience with the TDI for goods demonstrates. Question mark is if Module 3 in the White Paper on levelling the playing field as regards foreign subsidies becomes superfluous.

d) **It should be a tool where private business can take the initiative,** as is the case with the existing TDI for goods. This is essential to its effectiveness. It is lacking in the procurement directives and plays a minor role in the present proposal on IPI.

e) **It should be sector specific.** There are huge differences between for example banking services and construction and dredging on which this position paper is focusing. In construction and dredging it can easily be defined when a service is crossing the border, which is quite different with banking services. Construction and dredging are located, soil or waterbound and are physical. There is no one size fits all solution. But this should not present a problem, as is demonstrated by the separate regulation for air transport.

f) **It should apply to non-covered and covered services.** There is some hesitation, also in the Commission, whether there is sufficient legal basis for taking action on covered services. As it is argued below the General Exception of art. XIV of the GATS is an adequate legal basis for covered services.

9. TDI schemes for services – **The legal basis**

The instrument can be based on Article 207 para. 2 TFEU. It would be a regulation from the European Parliament and the Council based on a proposal from the Commission.



The EU regulation would have to comply with the EU's international obligations, in particular flowing from its commitments in the WTO. There could be two scenarios:

- either, the EU has not taken any commitments in the specific services sector ("uncovered services"). In that case, the EU is free to legislate without any constraints;
- or, the service in question falls under an area, where the EU has taken commitments its Schedule of Concessions. In that case, the legislation and the application thereof, would have to comply with the disciplines of the GATS, including Most Favoured Nation (MFN) and market access commitments (Articles XVI and XVII GATS).

As the new instrument would empower the EU to restrict such services, such measure would need a justification derived from the GATS itself. The WTO rulebook contains an elaborate system for anti-dumping and anti-subsidisation for goods. Such is not the case for services, although GATS contains an inbuilt mandate to develop rules against dumping and subsidies in the remit of trade in services. Until now, no such rules have been developed although the GATS Agreement dates back to 1995, a quarter of a century within which the services industry has grown multifold to 65% of economic activity.

With respect to services, there is no comparable provision on dumping/subsidies such as art. VI GATT, the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures. However, GATS has a general exception clause (Art. XIV) which could serve as a justification to restrict trade in services. Two provisions of art. XIV GATS are relevant: art. XIVa allowing for a derogation from MFN when necessary to protect public morals or to maintain public order; and art. XIVc allowing for a derogation from MFN necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of the GATS including those relating to the prevention of deceptive and fraudulent practices. Unfair competition goes counter to public order and is characterised by deceptive and fraudulent practices. Price discrimination practices to conquer foreign markets (predatory pricing) or strategic investments with huge State money behind (export subsidies for services) are inherently unfair and not accepted as ordinary business practices.

There is no reason to exclude the so-called covered services from such a remedy since art. XIV applies to both covered and uncovered services. To act otherwise would constitute a premium for unfair trading practices. The EU has recently



adopted a regulation on safeguarding competition in air transport¹¹ – which is an uncovered service thereby showing the way how to proceed. It is high time that the Commission likewise takes an initiative with respect to selected covered services sectors, such as construction and dredging.

A brief remark on art. XV GATS with respect to subsidies which demonstrates that it was the intention of the Marrakech Agreement to develop multilateral disciplines to avoid trade-distortive effects of subsidies. At its second meeting back in March 1995 the Council for Trade in Services decided to establish a Working Party to conduct these negotiations, but to no avail. The obligations of art. XV GATS were on a best-efforts basis. After a quarter of a century the EU is no doubt entitled to take action as described above.

It is sometimes argued that one of the problems that might arise is to define the moment when a service crosses the EU border. In ‘material’ services such as construction and dredging this is fairly easy to do. ‘Immaterial’ services may be a challenge, but not one that cannot be overcome. It is also clear that there is no one size fits all solution. A sectoral approach is necessary.

10. The remedies

With regard to redressive measures, inspiration can be taken from the recent Regulation of Parliament and Council (April 17, 2019) on safeguarding competition in air transport, although measures may differ from one sector to another given its specificity.

If unfair competition is proved to satisfaction *ex ante*, before the bidding process starts or private contracts are actually concluded, the service provider (construction company, dredging company, company with water bound activities) can be excluded from the bidding process or be prohibited from concluding the contract with its European partner. If the offense happens repeatedly, the service provider may be excluded from all tenders and contracts for a period not exceeding 3 years.

If unfair competition is proved *ex post*, when the public procurement has been awarded or the private contract has been passed, countervailing duties shall apply and a fine adopted. If the offense happens repeatedly, the service provider may be excluded from all tenders and contracts for a period of time not exceeding 3 years.

¹¹ Regulation (EU) 2019/712 of the EP and the Council of April 17, 2019



An EU-based company is forbidden to contract with the service provider which is guilty of the offense during the period the service provider has been excluded from bidding processes and private contracts, under penalty of a fine.

A threshold of (25 mio €) is proposed for this procedure which should be reserved for sizeable contracts

11. The European Commission produced two staff working documents on significant distortions in the economy of respectively China and Russia, for the purposes of trade defence investigations. The staff working documents are focusing on goods, understandably so, because TDI are limited to goods. These staff working documents, and others to come, should be enlarged to services.

12. It is important to substantiate the urgent need for new initiatives in this respect. A list and description of a number of questionable public procurement processes and private contracts is attached. One can only come to the conclusion that the pace of questionable files is speeding up recently and in such a way that shows this is part of an well-orchestrated offensive, notably from China, sometimes with complicity of other states.



ANNEX ON CASES OF UNFAIR TRADE PRACTICES IN EUROPE NOVEMBER 2020

Cases of unfair trade practices have been identified in Europe and listed hereafter for dredging and construction projects as well as acquisitions of strategic assets or companies. In addition, a selection of dredging and construction projects from this list are briefly described in individual sheets.

1	Coastal Erosion Remediation in Dobruja	Romania	2020
2	Weser Fairway 2021/2022	Germany	2021
3	Polimery Police Petrochemical Complex	Poland	2020
4	Sines Port Expansion	Portugal	2021
5	Vistula Lagoon Gdansk - lot 1	Poland	2019
6	Vistula Lagoon Gdansk - lot 2	Poland	2020
7	Świnoujście - Szczecin Fairway	Poland	2018
8	Tidal Lagoon Swansea Bay	UK	2015
9	Budapest-Belgrade Railway	Hungary- Serbia	2015
10	Peljesac Bridge	Croatia	2018
11	A2 Motorway Warsaw-Lodz	Poland	2010
12	Stockholm Metro prep. Works	Sweden	2020
13	Modernisation of part of the line Elin Pelin- Kostenet-Septembri	Bulgaria	2015
14	Bergen-Sotra Connect	Norway	2021
15	Hålogaland Bridge	Norway	2013
16	Beitstad Bridge	Norway	2017
17	Genova and Trieste Ports development Works (hinterland)	Italy	n.a.
18	Kuka Takeover	Germany	2018
19	Mota Engil Takeover	Portugal	2020
20	Aldesa Takeover	Spain	2019
21	Piraeus Port Takeover	Greece	2016



DOBROUJA COASTAL PROTECTION (ROMANIA) - DREDGING SHEET ON UNFAIR TRADE PRACTICES IN EUROPE

1. SHORT OVERVIEW OF THE PROJECT

The Dobruja Coastal Protection Project is about coastal erosion remediation (Stage II, Ph. 2) in the region of Dobruja (Romania) and consists of:

- design and execution components of the coastal protection system to reduce coastal erosion and ensure an adequate level of protection;
- beach nourishment and groins installation (design and build).

This ongoing project was tendered in 2020 and the tender evaluation is still ongoing. China Communication and Construction Company (CCCC) Dredging Ltd expressed, next to 4 European companies, its interest in the project, which is 85% financed by the EU.

2. SPECIFIC PROBLEMS RELATED TO THE PROJECT

- **Suspicion of State subsidies:** received by CCCC; CCCC is a Chinese SoE and was allowed by the Romanian tendering Authority to participate in the tender, while they are expected to avail of Subsidies without being subject to State Aid regulations;
- Risk of non-observance of the required Environment and Social regulations;
- Awarding criteria subject to interpretation (various criteria and %) and no visibility about how the decision of the Tendering Authority will be taken.



WESER FAIRWAY (GERMANY) – DREDGING SHEET ON UNFAIR TRADE PRACTICES IN EUROPE

1. SHORT OVERVIEW OF THE PROJECT

The project consists of maintenance dredging of a section of the Weser River in Germany from km 40 to km 130 for a period of 2 years 2021 and 2022. The Volume to be dredged is approx. 14 mio m³. Next to 4 European dredging companies, CCCC also participated in the tender. The tender evaluation was based on lowest price subject to compliance with the tender requirements.

The project was tendered in August 2020 and awarded to Heinrich Hirdes GmbH. CCCC Dredging participated in the bid, but it did not succeed, ending as fourth with a price 7 % higher than the winner.

2. SPECIFIC PROBLEMS RELATED TO THE PROJECT

- **Suspicion of State subsidies:** received by CCCC; CCCC entities are Chinese SoEs; it is a problem that CCCC entities are allowed to tender unchallenged in the European territory, while they are expected to avail of Subsidies without being subject to State Aid regulations;
- Risk of non-observance of the required Environment and Social regulations;
- Most of the requirements in the Tender documents could be complied with very easily by submitting the so-called Self-Declarations;
- **CCCC (Beijing) established a branch office in Hamburg on 22/04/2020.** The purpose of the Company mentions a rather general list of activities in construction and maritime activities and even in petrochemicals. It is remarkable that the address of the newly established CCCC Branch is the same as of another Chinese SoE ZPMC.



POLYMERS POLICE (POLAND) – DREDGING SHEET ON UNFAIR TRADE PRACTICES IN EUROPE

1. SHORT OVERVIEW OF THE PROJECT

The Polymers Police project comprises the engineering, procurement and construction (EPC) of a polymer petrochemical complex in Police (Poland). The project consist of five sub-projects including a propane dehydrogenation installation (PDH installation), a polypropylene production installation (PP installation with estimated capacity of 437,000 tons/year raw material) and an auxiliary installation; as well as a system of packaging, storage, logistics and forwarding of polypropylene and a transshipment and storage terminal. The dredging works, part of the construction of the transshipment and storage terminal include:

- dredging works (including contaminated soil: 32,965 m³) within the scope of PDH: 500,000 m³;
- bottom reinforcement along the transshipment bay 8,704.8 m² and slope protection 15,649 m².

This ongoing project was tendered in 2019 (tender completed) and works started in 2020. The main and final client is today Grupa Azoty Polyolefins SA, till October 2019 registered as PDH Polska SA. Grupa Azoty Polyolefins shareholder structure is as follow:

- Grupa Azoty S.A. 47%, (33% state shareholding);
- Grupa Azoty Zakłady Chemiczne Police S.A. 53% (59 % state controlled).

The major shareholder in both companies above is thus the Polish State.

In 2019, the Company signed agreement with three equity investors: Grupa LOTOS, Hyundai Engineering Co., Ltd and Korea Overseas Infrastructure and Urban Development (KIND). After providing all the contributions by the partners, Grupa Azoty Polyolefins' share capital will increase to about PLN 1.7 billion, with its shareholding structure will comprise: Grupa Azoty (GA) S.A. (30.52%), GA ZCh Police (34.41%), LOTOS Group (17.3%), Hyundai (16.63%), KIND (1.14%). In January 2020, the Polish Office of Competition and Consumer Protection (UOKiK) approved the establishment of this special purpose company.

Hyundai was selected as main contractor and CHEC (Chinese SOE) was selected for the dredging works. During the meeting on 23th October 2013 the **Polish Information and Foreign Investment Agency (PAIiZ) and its South Korean counterpart Korea Trade-Investment Promotion Agency (KOTRA) signed a comprehensive cooperation agreement** to strengthen their bilateral relations.



2. SPECIFIC PROBLEMS RELATED TO THE PROJECT

- It is not clear if the final Client Entity Grupa Azoty Polyofins is a private of a still public company as the 2 original Polish shareholders still own 65% of the shares of the new company;
- Most likely, this means a **breach of EU fundamental principles** of equal treatment, transparency and non-discrimination;
- Likely **conflict of interest** and likely Korean involvement both in demand and supply;
- Apparently, this process has been handled at ministerial level of both countries (Poland and Korea);
- **Signature of a bilateral investment agreement without knowledge of the European Commission;**
- Use of international agreements to bypass of EU public Procurement procedures through designed/deliberate unclarity in the nature of the project (both private and public) and in the project's roles (authority, contractor, subcontractor and suppliers).



ŚWINOUJŚCIE - SZCZECIN FAIRWAY (POLAND) - DREDGING SHEET ON UNFAIR TRADE PRACTICES IN EUROPE

1. SHORT OVERVIEW OF THE PROJECT

This EU-funded project aims at:

- increasing the capacity of a 67 km canal linking the cities of Szczecin and Świnoujście (Western Pomerania, Poland) to a depth -12.5 meters from the current -9.5 m;
- deepening ship-turning areas at three points along the canal (Police, Orli Isthmus, Grabowski);
- building bank protection in some sections of waterway;
- modernising and rebuilding the navigational system.

The project also entails ferromagnetic investigation and the removal on a surface about 10 million m². The dredging quantity amounts to 23.2 million m³.

The upgrade will allow more ships to access ports along the canal, make the waterway safer to navigate and reduce shipping transport costs, with positive impact on the local economy (construction, small scale shipping and tourism in particular) as well as reduced transport-related greenhouse gas emissions regionally. Part of Europe's TEN-T core transport network, it is an essential infrastructure linking the Baltic Sea and Southern Europe.

The project works were kickstarted in 2018 and they are expected to be completed by December 2022. The Maritime Office in Szczecin is the client. The total investment accounts for 337.9 M€ with the EU covering 287.2 M€ (approximately 85% of the costs) through the 'Infrastructure and Environment Operational Programme' for the 2014 – 2020 period.

The consortium consisting of Dredging International NV, Van Oord Dredging and Marine Contractors was awarded the project. However, two Chinese consortia participated in the tender: China Harbour Engineering Company Ltd (CHEC) and a consortium composed by Sinohydro Corporation Ltd with Powerchina Harbour Co, Ltd. and Altor sp. z o.o.

2. SPECIFIC PROBLEMS RELATED TO THE PROJECT

- **Suspicion of State subsidies:** received by CHEC; CHEC is a subsidiary of CCCC and is a Chinese SoE; CHEC was allowed by the Polish tendering Authority to participate in the tender, while they are expected to avail of Subsidies without being subject to State Aid regulations;
- Risk of non-observance of the required Environment and Social regulations.



BUDAPEST-BELGRADE RAILWAY (HUNGARY, SERBIA) – CIVIL SHEET ON UNFAIR TRADE PRACTICES IN EUROPE

1. SHORT OVERVIEW OF THE PROJECT

The Budapest-Belgrade Railway project aims at upgrading 184 km route in Serbia and 152 km route in Hungary to provide a double-track mixed traffic line suitable for a maximum speed of 150 km/h linking Soroksar South of Budapest and the Kelebia border crossing. On 16th December 2014, China, Hungary and Serbia signed a non-disclosed MoU to cooperate on the development and financing of the Hungarian section of the railway. This project has been delayed but is now ongoing. The tender was awarded in 2019 by the Chinese-Hungarian CRE Consortium. The railway is financed by China EXIM Bank.

2. SPECIFIC PROBLEMS OF THE PROJECT

- **Project was deemed uneconomical** and did not qualify for European funding/financing.
- Establishment of a bilateral funding agreement between China and Romania for the project. Apparent unclarity on whether or not **the EC was duly informed about the details of the Hungary-China MoU** and the China Exim Bank loan agreement to Hungary for the financing of the project;
- An SPC was created including the Romanian Client and the **Chinese Consortium composed of** China Railway International Corporation (CRIC) and China Railway International Group (CRIG).
- The award by an authority including the Chinese Consortium of the project to China Tiejiju Engineering & Construction and China Railway Electrification Engineering Group (both daughter companies of CRIG) is an apparent attempt to bypass the fundamental EU principles of transparency, non-discrimination and fair competition in EU territory, creating a deterrent for EU companies.
- De facto **conflict of interest** (under Article 42 of the Directive 2014/25) between the contracting authority and the successful tenderer;
- Serious risk of no effective safeguards with respect of confidentiality concerning trade secrets and other confidential aspects of tenders (Article 39 of the Directive).



PELJEŠAC BRIDGE (CROATIA) - CIVIL SHEET ON UNFAIR TRADE PRACTICES IN EUROPE

1. SHORT OVERVIEW OF THE PROJECT

The Pelješac Bridge Project consist in the construction of a bridge that would connect and reunify the Dubrovnik enclave with the rest of the national Croatian territory. This project was tendered in 2015 (tender completed), awarded to the China Communication and Construction Company (CCCC) and the works started in 2019. It received the financial support of the EU through the Cohesion Fund (85% of the estimated value of the bridge, amounting to EUR 420 million). The project occupies a crucial position in the Croatian agenda, as it would reunify the Dubrovnik enclave with the rest of the national territory by avoiding the Bosnian Neum port.

2. SPECIFIC PROBLEMS RELATED TO THE PROJECT

- **Suspicion of State subsidies:** received by CCCC; CCCC is a Chinese SoE and was allowed by the Croatian tendering Authority to participate in the tender, while they are expected to avail of Subsidies without being subject to State Aid regulations;
- **Abnormally Low Tender (ALT) made by CCCC.** Although for a specific lot of the project the price difference between the second-best bidder and the first was 90%, Croatian authorities did not consider there was cause for starting an Abnormally Low Tender investigation;
- **Suspicious of non-compliance with the EU legislation:** the vast majority of workers deployed on site are Chinese; doubts on respect of environmental, HR and social condition standards.