Basic information

2012/0060(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
International public procurement instrument See also Directive 2004/18/EC 2000/0115(COD) See also Directive 2004/17/EC 2000/0117(COD) See also Directive ... 2011/0437(COD) **Subject** 2.10.02 Public procurement 5.03 Global economy and globalisation 6.20.01 Agreements and relations in the context of the World Trade Organization (WTO) 6.20.02 Export/import control, trade defence, trade barriers 6.20.03 Bilateral economic and trade agreements and relations 6.20.04 Union Customs Code, tariffs, preferential arrangements, rules of origin 6.30.01 Generalised scheme of tariff preferences (GSP), rules of origin **Legislative priorities** Joint Declaration 2021 Joint Declaration 2022	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
INTA International Trade	CASPARY Daniel (EPP)	18/07/2019
	Shadow rapporteur RODRÍGUEZ-PIÑERO Inma (S&D) SCHREINEMACHER Liesje (Renew) BÜTIKOFER Reinhard (Greens/EFA) BOURGEOIS Geert (ECR)	

Former committee responsible	Former rapporteur	Appointed
INTA International Trade		
INTA International Trade		

Committee for opinion	Rapporteur for opinion	Appointed
DEVE Development	The committee decided not to give an opinion.	
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection (Associated committee)	ŠTEFANEC Ivan (EPP)	18/07/2019
JURI Legal Affairs	AUBRY Manon (The Left)	09/09/2021

Former committee for opinion	Former rapporteur for opinion	Appointed
DEVE Development		
DEVE Development		
EMPL Employment and Social Affairs		
EMPL Employment and Social Affairs		
ITRE Industry, Research and Energy		
ITRE Industry, Research and Energy		
IMCO Internal Market and Consumer Protection (Associated committee)		
IMCO Internal Market and Consumer Protection (Associated committee)		
JURI Legal Affairs		
JURI Legal Affairs		

Council of the European Union	Council configuration: Foreign Affairs; Meetings: 3348; Date: 2014-11-21
European Commission	Commission DG: Financial Stability, Financial Services and Capital Markets Union; Commissioner: DE GUCHT Karel
European Economic and Social Committee	
European Committee of the Regions	

Key events

Date	Event	Reference	Summary
21/03/2012	Initial legislative proposal published	COM(2012)0124	Summary
20/04/2012	Committee referral announced in Parliament, 1st reading		
25/10/2012	Referral to associated committees announced in Parliament		
10/12/2013	Committee report tabled for plenary, 1st reading	A7-0454/2013	Summary
14/01/2014	Debate in Parliament		
15/01/2014	Decision by Parliament, 1st reading	T7-0027/2014	Summary
15/01/2014	Matter referred back to the committee responsible for reconsideration		
20/10/2014	Resumption of business from the previous parliamentary term		
21/11/2014	Debate in Council		
29/01/2016	Legislative proposal published	COM(2016)0034	Summary
21/10/2019	Resumption of business from the previous parliamentary term		
29/11/2021	Vote in committee, 1st reading		
06/12/2021	Committee report tabled for plenary, 1st reading	A9-0337/2021	
14/12/2021	Decision by Parliament, 1st reading	T9-0497/2021	Summary
25/04/2022	Approval in committee of the text agreed at 1st reading interinstitutional negotiations		
08/06/2022	Debate in Parliament		
09/06/2022	Decision by Parliament, 1st reading	T9-0241/2022	Summary
09/06/2022	Results of vote in Parliament		
17/06/2022	Act adopted by Council after Parliament's 1st reading		
23/06/2022	Final act signed		
30/06/2022	Final act published in Official Journal		

Technical information	
Procedure reference	2012/0060(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	See also Directive 2004/18/EC 2000/0115(COD) See also Directive 2004/17/EC 2000/0117(COD) See also Directive ... 2011/0437(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 207
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee European Committee of the Regions
Stage reached in procedure	Procedure completed
Committee dossier	INTA/9/00039

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE516.711	21/08/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0454/2013	10/12/2013	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0027/2014	15/01/2014	Summary
Committee draft report		PE695.192	27/07/2021	
Specific opinion	JURI	PE697.640	15/10/2021	
Amendments tabled in committee		PE699.064	18/10/2021	
Amendments tabled in committee		PE699.065	18/10/2021	
Committee opinion	IMCO	PE695.252	29/10/2021	
Committee report tabled for plenary, 1st reading/single reading		A9-0337/2021	06/12/2021	
Text adopted by Parliament, partial vote at 1st reading /single reading		T9-0497/2021	14/12/2021	Summary
Text adopted by Parliament, 1st reading/single reading		T9-0241/2022	09/06/2022	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00015/2022/LEX	23/06/2022	

European Commission

Document type	Reference	Date	Summary
Initial legislative proposal	COM(2012)0124	21/03/2012	Summary
Document attached to the procedure	SWD(2012)0057	21/03/2012	
Document attached to the procedure	SWD(2012)0058	21/03/2012	
Legislative proposal	COM(2016)0034	29/01/2016	Summary
Commission response to text adopted in plenary	SP(2022)412	25/07/2022	
Follow-up document	COM(2025)0005	14/01/2025	
Follow-up document	SWD(2025)0002	14/01/2025	
Follow-up document	COM(2025)0430	30/07/2025	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2012)0124	25/06/2012	
Contribution	CZ_SENATE	COM(2012)0124	08/08/2012	
Contribution	FR_ASSEMBLY	COM(2016)0034	21/12/2016	

Additional information

Source	Document	Date
European Parliament	Briefing	
European Parliament	Briefing	16/03/2020
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Regulation 2022/1031
OJ L 173 30.06.2022, p. 0001

International public procurement instrument

2012/0060(COD) - 15/01/2014 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted amendments to 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.

The matter was referred back to the committee responsible for further consideration. The vote was put back to a later session.

A sustainable industry policy strategy in the Union: Parliament stressed the need to **exclude unfair tenders** comprising goods and/or services originating outside the Union. At the same time, reciprocity and fair conditions for the market access of Union industries should be ensured.

Union trade policy should help to **reduce poverty worldwide** by promoting improved working conditions, health and safety at work and fundamental rights.

Keep the principle of uniformity of the Common Commercial Policy (CCP): Parliament stated that that Member States or their contracting authorities may restrict the access of third country goods and services to their tendering procedures **only by measures provided for in the Regulation or by relevant Union law,** and only after an investigation by the Commission has revealed the absence of substantial reciprocity by the third country concerned.

'Lack of substantial reciprocity' is defined as the existence of any legislative, regulatory or administrative measure, procedure or practice, adopted or performed by public authorities or individual procuring entities in a third country, restricting access to public procurement or concession markets, in particular by a lack of transparency compared to international standards and discriminatory legislative provisions and administrative practices, which results in serious and recurrent discriminatory treatment against Union economic operators, goods or services.

Scope: the Regulation shall apply to the award of contracts and to the award of concessions for services provided for governmental purposes. It is recalled that the Regulation will apply to contracts with an estimated value equal or above EUR 5 000 000 exclusive of value-added tax (VAT). 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 are normally excluded.

Parliament proposed to exclude from the scope of the Regulation **developing countries considered vulnerable** due to a lack of diversification and insufficient integration within the international trading system as well as countries and potential GSP+ beneficiary countries.

Rules of origin: the determination of the origin of a service should be made in line with the principles of the WTO General Agreement on Trade in Services (GATS). The provisions determining the rules of origin of services should prevent the circumvention of restrictions on access to the Union public procurement market through the establishment of "letterbox" companies.

Procedure: Members wanted to ensure that the term 'calendar days' is consistently used throughout the proposal instead of 'days', 'calendar days' and 'working days'. They also **shortened the length of the procedures** throughout the proposal to provide faster protection, and made amendments intended to avoid an endless consultation procedure with third countries.

Observance of social and environmental standards: in the performance of public contracts economic operators must comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions.

A 'lack of substantial reciprocity' shall be presumed, where there is non-observance of international labour law provisions listed in the Directive on public procurement.

Assess impact and review the instrument: Parliament proposes incorporating a review clause, which obliges the Commission to look into the impact of the regulation, after it has come into force and being applied for a few years. Accordingly, when the Commission submits its second report, it shall also submit a legislative proposal for an amended Regulation or set out the reasons why, in its view, no changes are necessary.

For the same reason, Parliament suggests **limiting the application of any restrictive measures** taken through an implementing act to up to **5 years** (which may be extended for 5 years) so as to avoid these measures turning into a permanent closure of the market.

International public procurement instrument

2012/0060(COD) - 10/12/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on International Trade adopted the report by Daniel CASPARY (EPP, DE) 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.

The Committee on the Internal Market and Consumer Protection, exercising its prerogatives as an association committee in accordance with Rule 50 of the Parliament's Rules of Procedure, was also consulted for an opinion on the report.

The committee recommended that Parliament's position adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

A sustainable industry policy strategy in the Union: the committee stressed the need to exclude unfair tenders comprising goods and/or services originating outside the Union. At the same time, reciprocity and fair conditions for the market access of Union industries should be ensured.

Keep the principle of uniformity of the Common Commercial Policy (CCP): to prevent distortion of the internal market, and ensure efficient leverage through the CCP, Members stated that that Member States or their contracting authorities may restrict the access of third country goods and services to their tendering procedures **only by measures provided for in the Regulation or by relevant Union law**, and only after an investigation by the Commission has revealed the **absence of substantial reciprocity** by the third country concerned.

Scope: the Regulation shall apply to the award of contracts and to the award of concessions for services provided for governmental purposes.

It is proposed to exclude from the scope of the Regulation **developing countries considered to be vulnerable** due to a lack of diversification and insufficient integration within the international trading system as well as countries and potential GSP+ beneficiary countries.

Rules of origin: the determination of the origin of a service should be made in line with the principles of the WTO General Agreement on Trade in Services (GATS). The provisions determining the rules of origin of services should prevent the circumvention of restrictions on access to the Union public procurement market through the establishment of **"letterbox" companies.**

Procedure: Members wanted to ensure that the term 'calendar days' is consistently used throughout the proposal instead of 'days', 'calendar days' and 'working days'. They also shortened the length of the procedures throughout the proposal to provide faster protection, and made amendments intended to avoid an endless consultation procedure with third countries.

Public contracts: in the performance of public contracts economic operators must comply with applicable obligations in the fields of **environmental, social and labour law** established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions.

A 'lack of substantial reciprocity' shall be presumed, where the non-observance of international labour law provisions listed in the Directive on public procurement.

Assess impact and review the instrument: the report proposes incorporating a **review clause,** which obliges the Commission to look into the impact of the regulation, after it has come into force and being applied for a few years. Accordingly, when the Commission submits its second report, it shall also submit a legislative proposal for an amended Regulation or set out the reasons why, in its view, no changes are necessary.

For the same reason, the report suggests **limiting the application of any restrictive measures taken through an implementing act to up to 5 years** so as to avoid these measures turning into a permanent closure of the market.

International public procurement instrument

2012/0060(COD) - 29/01/2016 - Legislative proposal

PURPOSE: to establish measures aiming to improve 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.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: while the EU public procurement market is open to foreign bidders, **the procurement markets for foreign goods and services in third countries remain to a large extent closed *de iure or de facto***. The IPI aims at encouraging partners to engage in negotiations and opening participation for EU bidders and goods in third countries' tenders.

Many third countries are reluctant to open their procurement markets to international competition or to open those markets further than what they have already done. The value of US procurement offered to foreign bidders is currently just EUR 178 billion and EUR 27 billion for Japan, whereas only a fraction of the Chinese public procurement market is open to foreign business. The Commission stated that, all in all, more than half of the world's procurement market is currently closed due to protectionist measures and this share is only growing. As a result, **only EUR 10 billion of EU exports (0.08% of EU GDP) currently find their way in global procurement markets**, whereas an estimated EUR 12 billion of further EU exports remains unrealised due to restrictions.

Some **EUR 352 billion** of EU public procurement is open to bidders from member countries of the GPA. However, some important economic players like China, Brazil or India are not yet parties to the agreement and some of the existing parties have limited coverage of procurement in their schedules.

The Commission adopted in March 2012 its initial proposal for an international procurement instrument which sought to encourage partners to engage in negotiations and opening participation for EU bidders and goods in third countries' tenders. This initial proposal was discussed in the European Parliament and in the Council, **without, however, concluding the first reading**.

Since the launch of the IPI proposal in 2012, important trade negotiations have started, with the US (TTIP), Japan (FTA) or continued, such as for China (to join the GPA). The Commission considered that the adoption of the IPI would send a strong signal to these and other partners and would encourage negotiators to accelerate and pursue a substantial opening of their procurement markets.

In view of the fact that there appears to be broad agreement that an imbalance currently exists between the openness of the EU procurement market and third country procurement markets and that European companies should enjoy better access to procurement opportunities abroad, **the Commission decided to review its initial proposal** in order to respond to some of the concerns both legislative organs of the EU have expressed while ensuring that the revised proposal still provides the EU with better leverage in its negotiations to open foreign procurement markets.

IMPACT ASSESSMENT: the Commission's Impact Assessment Board (IAB) has issued two opinions on the impact assessment report. The amendments now put forward aim at making the instrument more targeted and more easily applicable in practice while further limiting the potential negative effects that were identified in the impact assessment report.

As regards effectiveness,

- the amended proposal will still meet the initial objective to clarify the applicable rules, and the Commission will continue having the final say on the use of restrictive measures;
- with the deletion of the decentralised pillar, the application of the rules will be simpler and further harmonised, and the margin of error caused by contracting authorities/entities applying the restrictive measures will be reduced;
- the reduction of time limits for the Commission's investigation will ensure that there is earlier clarity on whether or not restrictive measures will be taken.

As regards efficiency: the proposed amendments reduce the administrative burden:

- the impact assessment estimated the costs in relation to the notification process of the decentralised procedure to amount to EUR3.5 million. The deletion of the decentralised pillar, including its time limits, abolishes all potential risks linked to the notification process identified in the impact assessment;
- the proposed amendments will allow to target those territories of a third country which are actually responsible for the discriminatory measures without the need to target the third country as a whole. This possibility for more targeted and justifiable measures will further reduce the risk for retaliation.

CONTENT: the **revised proposal from the Commission seeks to put in place an International Procurement Instrument** (IPI). This is the EU response to the lack of level playing field in world procurement markets.

The amendments presented in this proposal aim at increasing the effects of the instrument upon third countries while eliminating the potentially negative consequences of the instrument in its original form, such as the possibility to close the EU procurement market completely to a trading partner, the administrative burden related to the application of the instrument and the risk of fragmentation of the internal market.

At the same time, the proposal focuses on the **role of the Commission** to investigate procurement barriers in third countries and provides the tools to engage with third countries towards their removal.

More specifically, the proposal:

- **deletes the possibility to close the market and to limit possible restrictive measures to price penalties** – now called “price adjustment measures”. Following a Commission investigation, when it is determined that a country applies barriers to EU participation in procurement, a price adjustment would be applied to bidders or products or services from that country. Contrary to the initial proposal, foreign bidders and products and services subject to a price adjustment measure for evaluation purposes could still be awarded the contract, if despite the price adjustment the offer remains competitive in terms of price and quality;
- **eliminates the possibility for contracting authorities to decide autonomously a prohibition on foreign bidders' participation** in their tenders by deleting the decentralised pillar;
- **establishes a presumption that tenders submitted by companies originating in the targeted third country will be targeted by the price penalty**, unless they can demonstrate that less than 50% of the total value of their tender is made up of non-covered goods and services originating in this third country. While in the original proposal contracting authorities bore the burden of proof, it is now borne by the bidder;
- **reduces the administrative burden** further by allowing Member States to indicate which of their procuring entities will be required to implement the price adjustment measure;
- provide that the price adjustment measure would not be applicable in relation to European small and medium-sized enterprises (**SMEs**) and **bidders and products originating from developing countries subject to GSP+ treatment**;
- introduce a new provision allowing **targeting territories at regional or local level**, like states, regions or even municipalities;
- **shortens the time for the Commission's investigation** in the centralised procedure;
- **makes public** the findings of the Commission investigations identifying barriers to tenders in third countries;
- clarifies that the instrument will apply to all procurement and concessions which are covered by the EU procurement and concession directives adopted in February 2014 (which excludes for example concessions regarding water supply services).

International public procurement instrument

2012/0060(COD) - 21/03/2012 - Initial legislative proposal

PURPOSE: to improve the conditions under which EU businesses gain access to the public procurement markets of third countries.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: in the negotiations on a revised Government Procurement Agreement (GPA) in the context of the World Trade Organisation (WTO) and in bilateral negotiations with third countries, the EU has advocated an ambitious opening of international public procurement markets. Some **EUR 352 billion of EU public procurement** is open to bidders from member countries of the WTO agreement on government procurement.

However, many third countries are reluctant to open their procurement markets to international competition. Currently, **EU suppliers face manifold restrictive procurement practices** in many of the countries that are the EU's main trading partners.

The value of US procurement offered to foreign bidders is currently just EUR 178 billion and EUR 27 billion for Japan, whereas only a fraction of the Chinese public procurement market is open to foreign business.

All in all, **more than half of the world's procurement market is currently closed due to protectionist measures** and this share is only growing. As a result, only EUR 10 billion of EU exports (0.08% of EU GDP) currently find their way in global procurement markets, whereas an estimated EUR 12 billion of further EU exports remains unrealised due to restrictions.

In contrast, the EU has kept its public procurement market largely open to international competition, despite growing pressure on its domestic market, in particular from emerging economies on certain key sectors (railways, construction, IT services). With the exception of some provisions limited in scope to supply and service contracts in the utilities sector, the EU has not exercised its power to regulate the access of foreign goods, services and companies to the EU's public procurement market.

Given the rising importance of emerging economies, **the absence of a level playing field causes many problems.** This initiative aims at solving these problems (i) by strengthening the position of the European Union when negotiating access for EU companies to the public procurement markets of third countries, in order to open up our trading partners' markets; (ii) clarifying, for this purpose, the rules governing access by third-country companies, goods and services to the EU's public procurement market.

This initiative implements the Europe 2020 strategy and the Flagship Initiative on Integrated Industrial Policy for the Globalisation Era. It also implements the Single Market Act and the Communication on Trade, Growth and World Affairs.

IMPACT ASSESSMENT: several options have been considered by the Commission:

- ***Option 1:*** not to take any additional action, and continue with business as usual with the international market access negotiations (possibly in a reinforced manner) with the European Union's trading partners.
- ***Option 2:*** upgrading the implementation of existing tools under Directive 2004/17/EC (Articles 58 and 59), based on better guidance or an extension of the scope of these tools to cover the entire scope of Directives 2004/17/EC and 2004/18/EC.
- ***Option 3***: close generally or by sector the EU public procurement market to goods, services and suppliers from third countries, subject to the EU's international obligations in this field.
- ***Option 4:*** create an autonomous instrument that would strike the right balance between, on the one hand, the need to enhance the Union position in negotiations on market access, and on the other hand, the preservation of a competitive procurement regime in the EU.

The Commission favours the fourth option.

LEGAL BASIS: Article 207 TFEU.

CONTENT: the proposal establishes a **comprehensive EU external public procurement policy** that governs the access of foreign goods and services to the EU public procurement market and includes mechanisms to encourage the EU's trading partners to start market access discussions.

The main points of the proposal are as follows:

Goods and services benefiting from EU commitments: the proposal reflects in EU legislation the principle that, on the EU's internal market in procurement, goods and services benefiting from market access commitments are **treated equally to EU goods and services** and it extends this treatment to goods and services originating in least-developed countries.

Goods and services not benefiting from market access commitments: for contracts with an estimated value **equal or above EUR 5 million**, the Commission may approve Contracting authorities/entities **excluding** tenders where the value of non-covered goods and services exceeds 50% of the total value of goods and services included in the tender.

After informing potential tenderers, in the contract notice, of its intention to exclude such tenders, a contracting authority/entity has to notify the Commission when it receives tenders that fall into this category. The Commission would give its approval to the exclusion if there is a lack of substantial reciprocity in market opening between the EU and the country from which the goods and/or services originate. The Commission will approve the exclusion where the goods and services concerned fall within the scope of a market reservation by the EU in an international agreement.

EU mechanism to increase leverage on market access: the Commission may (i) conduct **investigations** to verify the existence of restrictive procurement practices; (ii) invite the country concerned to enter into **consultation** in order to address such restrictive practices and thereby create a better market access situation for EU companies; (iii) temporarily **restrict** the access of goods and/or services from that country to the EU public procurement market.

Such measures may in principle consist of (i) the disqualification of certain tenders made up for more than 50% of goods or services originating in the country concerned; and/or (ii) a mandatory price penalty on those goods or services tendered which originate in the country concerned.

Abnormally low tenders: as a complement to the provisions on abnormally low tenders in the proposed reform of the public procurement directives, contracting authorities/entities will be required to inform the other tenderers when they intend to accept abnormally low tenders where the value of non-covered goods and services exceeds 50% of the total value of goods and services included in the tender.

BUDGETARY IMPLICATIONS: the proposal does not have budgetary implications. The additional tasks for the Commission can be met with existing resources.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

International public procurement instrument

2012/0060(COD) - 21/03/2012

PURPOSE: to improve the conditions under which EU businesses gain access to the public procurement markets of third countries.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: in the negotiations on a revised Government Procurement Agreement (GPA) in the context of the World Trade Organisation (WTO) and in bilateral negotiations with third countries, the EU has advocated an ambitious opening of international public procurement markets. Some **EUR 352 billion of EU public procurement** is open to bidders from member countries of the WTO agreement on government procurement.

However, many third countries are reluctant to open their procurement markets to international competition. Currently, **EU suppliers face manifold restrictive procurement practices** in many of the countries that are the EU's main trading partners.

The value of US procurement offered to foreign bidders is currently just EUR 178 billion and EUR 27 billion for Japan, whereas only a fraction of the Chinese public procurement market is open to foreign business.

All in all, **more than half of the world's procurement market is currently closed due to protectionist measures** and this share is only growing. As a result, only EUR 10 billion of EU exports (0.08% of EU GDP) currently find their way in global procurement markets, whereas an estimated EUR 12 billion of further EU exports remains unrealised due to restrictions.

In contrast, the EU has kept its public procurement market largely open to international competition, despite growing pressure on its domestic market, in particular from emerging economies on certain key sectors (railways, construction, IT services). With the exception of some provisions limited in scope to supply and service contracts in the utilities sector, the EU has not exercised its power to regulate the access of foreign goods, services and companies to the EU's public procurement market.

Given the rising importance of emerging economies, **the absence of a level playing field causes many problems.** This initiative aims at solving these problems (i) by strengthening the position of the European Union when negotiating access for EU companies to the public procurement markets of third countries, in order to open up our trading partners' markets; (ii) clarifying, for this purpose, the rules governing access by third-country companies, goods and services to the EU's public procurement market.

This initiative implements the Europe 2020 strategy and the Flagship Initiative on Integrated Industrial Policy for the Globalisation Era. It also implements the Single Market Act and the Communication on Trade, Growth and World Affairs.

IMPACT ASSESSMENT: several options have been considered by the Commission:

- ***Option 1:*** not to take any additional action, and continue with business as usual with the international market access negotiations (possibly in a reinforced manner) with the European Union's trading partners.
- ***Option 2:*** upgrading the implementation of existing tools under Directive 2004/17/EC (Articles 58 and 59), based on better guidance or an extension of the scope of these tools to cover the entire scope of Directives 2004/17/EC and 2004/18/EC.
- ***Option 3***: close generally or by sector the EU public procurement market to goods, services and suppliers from third countries, subject to the EU's international obligations in this field.
- ***Option 4:*** create an autonomous instrument that would strike the right balance between, on the one hand, the need to enhance the Union position in negotiations on market access, and on the other hand, the preservation of a competitive procurement regime in the EU.

The Commission favours the fourth option.

LEGAL BASIS: Article 207 TFEU.

CONTENT: the proposal establishes a **comprehensive EU external public procurement policy** that governs the access of foreign goods and services to the EU public procurement market and includes mechanisms to encourage the EU's trading partners to start market access discussions.

The main points of the proposal are as follows:

Goods and services benefiting from EU commitments: the proposal reflects in EU legislation the principle that, on the EU's internal market in procurement, goods and services benefiting from market access commitments are **treated equally to EU goods and services** and it extends this treatment to goods and services originating in least-developed countries.

Goods and services not benefiting from market access commitments: for contracts with an estimated value **equal or above EUR 5 million**, the Commission may approve Contracting authorities/entities **excluding** tenders where the value of non-covered goods and services exceeds 50% of the total value of goods and services included in the tender.

After informing potential tenderers, in the contract notice, of its intention to exclude such tenders, a contracting authority/entity has to notify the Commission when it receives tenders that fall into this category. The Commission would give its approval to the exclusion if there is a lack of substantial reciprocity in market opening between the EU and the country from which the goods and/or services originate. The Commission will approve the exclusion where the goods and services concerned fall within the scope of a market reservation by the EU in an international agreement.

EU mechanism to increase leverage on market access: the Commission may (i) conduct **investigations** to verify the existence of restrictive procurement practices; (ii) invite the country concerned to enter into **consultation** in order to address such restrictive practices and thereby create a better market access situation for EU companies; (iii) temporarily **restrict** the access of goods and/or services from that country to the EU public procurement market.

Such measures may in principle consist of (i) the disqualification of certain tenders made up for more than 50% of goods or services originating in the country concerned; and/or (ii) a mandatory price penalty on those goods or services tendered which originate in the country concerned.

Abnormally low tenders: as a complement to the provisions on abnormally low tenders in the proposed reform of the public procurement directives, contracting authorities/entities will be required to inform the other tenderers when they intend to accept abnormally low tenders where the value of non-covered goods and services exceeds 50% of the total value of goods and services included in the tender.

BUDGETARY IMPLICATIONS: the proposal does not have budgetary implications. The additional tasks for the Commission can be met with existing resources.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

International public procurement instrument

2012/0060(COD) - 14/12/2021 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted by 590 votes to 8, with 99 abstentions, **amendments** to 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.

The matter was referred back to the committee responsible for inter-institutional negotiations.

The main amendments adopted in plenary concern the following points:

Subject matter and scope

The Regulation:

- establishes measures intended to **improve the access of Union economic operators, goods and services to the procurement and concessions markets of third countries**, regarding non-covered procurement (meaning procurement procedures for goods, services or concessions regarding which the Union has not undertaken market access commitments in an international agreement in the field of procurement or concessions);

- lays down **procedures** for the Commission to undertake investigations into alleged third-country measures or practices against Union economic operators, goods and services, and to enter into consultations with the third countries concerned.

The International Procurement Instrument (IPI) encourages greater openness of public procurement markets in countries that protect this sector, by introducing measures that limit access to open EU tenders for non-EU companies from countries that do not offer similar access conditions to EU companies.

Members suggested that the Commission should be able to impose IPI measures, by means of implementing acts, in relation to such measures or practices of third countries, in order to limit the access of economic operators, products or services from third countries to EU procurement procedures.

Environmental and social requirements

Contracting authorities should adopt the necessary measures to ensure that applicable environmental, social and labour requirements are taken into account in public procurement procedures. Member States should inform the Commission of any difficulties, in law or in fact, encountered and reported by their economic operators and which are due to the non-observance of the international environmental, social and labour law, when those undertakings have tried to secure the award of contracts within the EU or in third countries.

Determination of origin

The origin of a service would be determined on the basis of the origin of the legal or natural person providing it. The origin of a legal person should be considered to be the country under the laws of which the legal person is constituted or otherwise organised and in the territory of which the legal person is engaged in substantive business operations.

Investigation and consultation

When assessing whether specific measures or practices exist in a third country that could result in the impairment of access of Union goods, services or economic operators to the procurement or concession markets, the Commission should examine to what degree laws, rules or other measures on procurement and concessions of the country concerned ensure **transparency** in line with international standards, and do not result in **serious and recurring restrictions** against Union goods, services or economic operators.

The Commission should be able to initiate at any time a transparent investigation into restrictive or discriminatory procurement measures or practices allegedly adopted or maintained by a third country, if it considers that such an investigation is in the interest of the Union. In this context, particular attention should be paid to the general objective of **achieving reciprocity** by opening third-country markets and improving market access opportunities for EU economic operators.

The Commission should keep interested parties, the European Parliament and the Member States regularly informed within the Committee established by the Trade Barriers Regulation.

IPI measures

If the investigation confirms the existence of restrictive measures or practices, and the consultations with the country concerned do not lead to satisfactory corrective actions that result in effectively remedying the serious and recurrent impairment of access for Union economic operators, goods and services within a reasonable timeframe or the third country concerned declines to enter into consultations, the Commission should adopt, under this Regulation, IPI measures in the form of a **score adjustment or exclusion of tenders**.

A score adjustment measure should be applied only for the purpose of the evaluation of tenders submitted by economic operators originating in the country concerned. It should not affect the price actually due to be paid under the contract to be concluded with the successful tenderer.

Invitations to tender concerned

The IPI measure should only apply to procurement procedures with an estimated value of at least EUR 10 000 net of value-added tax for works and concessions, and of at least EUR 5 000 000 net of value-added tax for goods and services.

Additional obligations

In the case of procurement procedures to which an IPI measure applies, contracting authorities should include, as one of the conditions of the contract with the successful tenderer, an obligation not to subcontract, including through the delivery of goods and parts, more than 25% of the total value of the contract to economic operators originating in a third country which is subject to an IPI measure.

Contracting authorities should include a reference to the additional conditions in the documents for procurement procedures to which an IPI measure applies. The Commission and Member States should make available best practice guidelines to take into account the information needs of SMEs submitting stand-alone tenders.

Review

No later than three years after the date of entry into force of the Regulation and every three years thereafter, the Commission should review the scope, functioning and efficiency of the Regulation and report to the European Parliament and the Council.

International public procurement instrument

2012/0060(COD) - 09/06/2022 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 554 votes to 7, with 14 abstentions, a legislative resolution 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.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Subject matter and scope

The Regulation:

- establishes measures to **improve access for EU economic operators, goods and services to third country procurement markets and concessions**, as regards ‘non-covered procurement’, i.e. procurement procedures for goods, services or concessions for which the EU has not made market access commitments under an international agreement;

- lays down procedures for the Commission to **undertake investigations into alleged third-country measures or practices** against Union economic operators, goods and services, and to enter into consultations with the third countries concerned.

This Regulation provides for the possibility for the Commission to impose IPI measures in relation to such third-country measures or practices to restrict the access of economic operators, goods or services from third countries to Union public procurement procedures.

The **International Procurement Instrument (IPI)** encourages greater openness of public procurement markets in countries that protect this sector, by introducing measures that limit access to open EU tenders for non-EU companies from countries that do not offer similar access conditions to EU companies.

Environmental, social and labour requirements should apply to economic operators.

Determination of origin

The origin of a service should be determined on the basis of the origin of the legal or natural person providing it. The origin of a legal person should be considered to be the country under whose law a legal person is incorporated or organised and in whose territory it engages in substantial business operations.

Investigations and consultations

On its own initiative or upon a duly substantiated complaint by an interested party from the Union or a Member State, the **Commission may initiate an investigation** into an alleged measure or practice of a third country. The Commission should invite the third country concerned to submit its observations, to provide relevant information and to enter into consultation with the Commission with a view to eliminating or remedying the alleged third country measure or practice.

In view of the Union's objective of encouraging sustainable economic growth in low-income countries, the Commission should not be able to launch an investigation into the practices of **least developed countries** benefiting from the Everything But Arms regime.

IPI measures

If the investigation confirms the existence of the restrictive measures or practices, and concertation with the country concerned does not lead to satisfactory corrective action, or if the third country concerned refuses to participate in the concertation process, the Commission should adopt an **IPI measure in the form of an adjustment of the outcome or exclusion of tenders**, if it deems this to be in the Union's interest.

In this context, particular attention should be paid to the general objective of achieving reciprocity by opening up third country markets and improving market access opportunities for EU economic operators.

An adjustment of the result should only apply for the purpose of evaluating tenders submitted by economic operators originating from the third country concerned. Such a measure should not affect the price to be paid under the contract to be concluded with the successful tenderer.

The IPI measure should only apply to procurement procedures with an estimated value of at least **EUR 15 million** excluding value added tax for works and concessions, and at least **EUR 5 million** excluding value added tax for goods and services.

The Commission may **withdraw, suspend or reinstate** an IPI measure by means of an implementing act and, in such cases, will publish a notice in the Official Journal of the European Union. An IPI measure will expire five years after its entry into force and may be extended for a further five years.

List of contracting authorities exempted from the Regulation

Member States should be able to apply for exemption from IPI measures for a limited list of local contracting authorities, under certain strict conditions.

Anti-circumvention measures

In order to avoid circumvention, additional obligations should be imposed on successful tenderers in procurement procedures to which an IPI measure is applicable, such as an obligation not to subcontract more than 50% of the total value of the contract to economic originating in third country subject to the IPI measure.

Guidelines and review

The Commission should publish guidelines to guide Member States' contracting authorities in the use of this Regulation, and in particular to facilitate its application by SMEs.

No later than four years after the adoption of an implementing act or five years after the date of entry into force of the Regulation, and every five years thereafter, the Commission should review the scope, functioning and effectiveness of the Regulation and report its findings to the European Parliament and the Council.