

Background information

International Procurement Instrument (IPI)

The Commission adopted a revised legislative proposal for IPI on 29 January 2016, (initial proposal from 2012). Its aim is to open third countries by creating leverage in negotiations on procurement.

Why now?

In the context of spreading discriminatory practices (“Buy America(n)”, “Made in China 2025” or “Make in India”), it is necessary to promote reciprocity in global procurement. In the EU-China Communication (Action 6), the Commission called for adoption of IPI (by end 2019). The European Council also called in March 2019 for “resuming discussions on IPI”.

What?

The IPI, according to the proposal, would be functioning in three steps:

1. Commission investigation on existing serious and recurrent discrimination in access of EU companies to a third country procurement market;
2. Negotiation with this third country aiming at removing the discriminatory measures;
3. Only in case of failure of these negotiations, possible adoption of a "price adjustment measure" (=price penalty) by EU, to be applied by contracting authorities to offers whose origin is for more than 50% from targeted countries/sectors.

Who?

- Council: Under Finnish and Croatian presidencies, many meetings took place and several adaptations have been discussed. The Croatian Presidency tabled draft text proposals in February and June, in particular for core issues (the target and type of IPI measures). Under German Presidency, progress was limited however (due to internal discussions) and only a few meetings took place.
- The European Council in September called to “accelerate work on IPI”
- The EP was supportive of the proposal, but stopped working in 2017 when Council did not progress. [REDACTED] (EPP-DE) was reconfirmed as [REDACTED] in the INTA Committee. Currently, he is waiting for progress in Council, before deciding on the next steps in EP.

How?

The following changes are envisaged to build consensus on a credible, effective and simple IPI:

- **Type of measure:** There is wide support to add the possible exclusion of bids, simpler to implement. Price-adjustment could remain as an alternative option.
- **Target of the measure:** The proposal targets bids with a certain foreign content, which is considered too complex. Instead, there is wide support for applying IPI instead to companies established in the third country concerned.

- **Procedures:** There is general support for shortening and simplifying the investigation and consultations, and doing both phases in parallel.
- **Thresholds:** the current 5M€ threshold is considered too low, in particular for works and concession contracts. Higher thresholds would also exclude small contracting authorities.

What next?

- Early 2021, the PT Presidency has submitted a compromise legal text to MS. This is discussed in detail in the meetings of the TQWP.
- Once the Council agrees on a way forward, discussions with EP should resume to finalise the adoption. This could potentially happen in the first half of 2021.
- The Commission (TRADE and GROW) continues to proactively support consensus building by elaborating meaningful improvements to the text.

Threshold for the application of the EU procurement regime

1. Thresholds

- The thresholds above which European legislation for public procurement applies are set out in the Public procurement Directives 2013/24/EU, 2014/24/EU and 2014/25/EU (“PP Directives”).
- The main limits¹ are:
 - EUR 139.000 for most types of services and supplies purchased by central government authorities
 - EUR 5.350.000 for construction contracts
- The thresholds are the result of the EU's commitments in the WTO Government Procurement Agreement (GPA). Thresholds must be aligned to correspond to the equivalents of the GPA thresholds every two years.
- Article 92 of Directive 2014/24/EU² foresees a review by the Commission of the economic effects resulting from the thresholds. This review shall take into account factors such as cross-border award of contracts and transaction costs.
- A Commission report on this review should have been provided by 18 April 2019. No report has been published so far, due to delays in the transposition of the PP Directives.
- Article 92 also requires the Commission to consider suggesting an increase of the thresholds during the next round of GPA negotiations.

2. Calls for an increase of thresholds

¹ For a more detailed overview of the different thresholds, see: https://ec.europa.eu/growth/single-market/public-procurement/rules-implementation/thresholds_en

² Equally worded provisions are contained in Article 53 of Directive 2014/23/EU (“Concessions Directive”) and Article 108 of Directive 2014/25/EU

- Redacted under exception of article 4(1)(a) third indent of Regulation 1049/2001
- In its Conclusions of 30 November 2020³, the Council called on the Commission to review the economic effects resulting from the application of the thresholds as stated in Article 92.
- In the Council conclusions, the call for review is based on the need to boost investment in the aftermath of COVID-19, and SMEs' access to procurement markets in the EU recovery.
- Redacted under exception of article 4(1)(a) third indent of Regulation 1049/2001
- The PP Directives provide for the necessary flexibility to public buyers to purchase goods and services directly linked to the COVID-19 crisis as quickly as possible. The Commission issued guidelines in this regard already in April 2020.⁴

3. BDI position

- In recent public statements, the BDI has taken a critical view of the DE government's calls for increases of the thresholds, as exemplified in a BDI letter to German Minister for Economic affairs *Altmaier* dated 2 December 2020.
- The letter lays out the main reasons for the BDI's rejection of a threshold increase:
 - Thresholds are already very high.
 - A threshold increase would lead to
 - thwarting the essential goals of transparency, fair competition and fighting corruption
 - reducing effective legal protection for bidders in tender procedures
 - harming SMEs competing for smaller contracts (for which there is less legal protection)
 - The existing legal regime allows for exemptions and flexibility to cope well the COVID crisis.
 - Whatever the result of the Art. 92 review, the Commission should not seek an increase of the thresholds because it would mean:
 - Unwelcome reduction of the scope of the GPA
 - Less business opportunities for EU companies abroad
 - Wrong signal in terms of international market opening.

³ Council Conclusions Public Investment through Public Procurement: Sustainable Recovery and Reboosting of a Resilient EU Economy (2020/C 412 I/01), [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG1130\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG1130(03))

⁴ Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (2020/C 108 I/01), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0401(05)&from=EN)

