



**EUROPEAN COMMISSION**  
 DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP  
 AND SMES  
 Single Market for Public Administrations  
**Public Procurement Strategy**

Brussels,  
 GROW.G.1/ [redacted]

## NOTE FOR THE FILE

**Subject: Mission to Berlin on 22 October 2019 – presentation of Guidance on the participation of third-country bidders to Federation of German Industries (Bundesverband der Deutschen Industrie BDI)**

On 22 October 2019, I travelled to Berlin to the headquarters of the Federation of German Industries (BDI) to give a presentation on the Guidance on third-country participation to the BDI's public procurement committee. I had been invited speak before the committee by Mr [redacted] from the BDI following our joint participation in the panel on the "international aspects of public procurement" at the *forum vergabe* conference in Fulda in September 2019.

As was already the case at the *forum vergabe* conference, the participants expressed their generally favourable view for the Guidance. The general view is that the Guidance has brought welcome clarification with regard to the interpretation of the PP Directives and the question of access of third-country bidders.

Following the presentation, the committee members asked a number of questions regarding the Guidance, but also more general questions regarding the IPI and the international aspects of public procurement. In general, there was a strong interest about the IPI, in particular about the current state-of-play and the time-table. I explained that an adoption by the end of 2019 (as announced in the China communication) was not likely.

The questions asked related, in particular, on the relationship between the provision in Article 25 of Directive 2014/24/EU and the IPI. I explained that the Guidance and the IPI are complementary, and that the Guidance provides for the possibility to "exclude" economic operators, whereas the IPI is primarily a market opening tool that aims at encouraging further market opening through GPA/FTA negotiation and goes further than Article 25 of Directive 2014/24/EU. Furthermore, there were questions on whether the rule in Article 85 of Directive 2014/25/EU will be deleted following the adoption of the IPI (2016 proposal foresees this deletion). It appears that most committee members are against such deletion and that Article 85 should be kept as a means to impose pressure.

Another issue that was raised was whether, in relation to the procurement of projects financed with EU structural funds, it was envisaged to amend the rules so that non-EU bidders originating in a “non-reciprocity country” could be excluded. The committee member asking this question expressly referred to the example of the Pelješac bridge in Croatia.

Furthermore, Mr [REDACTED] stated that the clarifications in the Guidance on the rules regarding abnormally low tenders are welcome. He stressed, however, that from the viewpoint of the BDI, these are not sufficient, and that further measures are necessary to address the problems arising from the participation of bidders benefiting from foreign subsidies.

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