International procurement instrument

The international procurement instrument (IPI), first proposed in 2012 (proposal revised in 2016), is designed to facilitate reciprocal opening of procurement markets in non-EU (third) countries. It is intended to be deployed when a third country closes its public procurement markets to EU bidders. Tenderers from such countries could subsequently be subject to measures lowering their chances of successfully bidding in the EU, and could even be excluded from public procurement procedures altogether. Parliament is expected to vote during the June 2022 plenary session on an agreement reached between the co-legislators in trilogue negotiations.

Background

Government procurement is a significant part of the EU economy, representing about 14 % of GDP. While EU procurement markets remain generally open to third-country bidders, many other economies do not reciprocate. The IPI aims at giving the EU leverage in negotiating the opening of these markets.

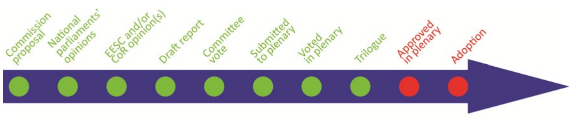
European Commission proposals

The first proposal in 2012 did not gain support in the Council, where some Member States perceived it as liable to provoke escalatory countermeasures. This led to the amended 2016 version, which aimed at giving the Commission rights to investigate alleged discrimination, consult the third countries on the opening of their procurement markets and, as a last resort, apply a price penalty to bids from the targeted country. The German (2020) and Portuguese (2021) Council Presidencies revived the proposal.

European Parliament position

In June 2021, the Council agreed on a mandate for negotiations with the European Parliament. The negotiators for the Parliament, led by the Trade Committee Chair, Bernd Lange (S&D, Germany) and rapporteur Daniel Caspary (EPP, Germany), achieved a provisional agreement with the Council in March 2022. Thresholds for application of the IPI measures were set at €15 million for tenders for works and concessions, and €5 million for goods and services (before VAT). These should allow the IPI to cover 70 % of the total procurement value in the EU, while minimising the administrative burden. Parliament also reduced the number of exceptions to the IPI to two, widening its scope, which apply: (i) if all the bids submitted in the procedure are from third countries subject to the IPI; (ii) when there is an overriding public interest relating to public health or environmental protection. Members raised the bar for exemption from the IPI, granting it only to local contracting authorities representing fewer than 50 000 citizens, and the least-developed countries. The IPI applies to bidders, goods and services from third countries that either do not have an international public procurement agreement with the EU, or that have an agreement that does not include commitments to open their markets. In the process of investigation into barriers to EU companies, the Commission will consult with the third country, to try to persuade it to remove them. If these barriers are significant and persist despite this consultation, the EU should be able to restrict access to its own public procurement markets by applying a reduced score for the bid, with the adjustment for the score potentially reaching 50 % when the public contract is awarded on the basis of price and additional qualitative criteria, and up to 100 % when price alone is used. Tenderers could also be excluded entirely from award procedures. Parliament is set to vote on the provisional agreement during the June 2022 plenary session.

First-reading report: 2012/0060(COD); Committee responsible: INTA; Rapporteur: Daniel Caspary (EPP, Germany). For further information see our 'EU Legislation in progress' briefing.



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PE 729.459 – June 2022