



Mr Michel Barnier  
Commissioner for Internal Market and Services  
European Commission  
200 rue de la Loi  
B-1049 Brussels  
Belgium

3 October 2011

Dear Commissioner, *Dear Michel,*

I am writing to you concerning the European Commission's reflection on a new EU legal instrument to clarify the terms for access to the EU public procurement market for goods, services and companies originating in third countries.

EU public procurement markets are among the most open in the world. The EU has offered access to 85% of its public contracts to companies from outside the EU in the framework of the WTO's Agreement on Government Procurement (GPA) and bilateral and regional free-trade agreements. However, BUSINESSEUROPE has concerns regarding the reluctance by many trading partners to open their procurement markets to international competition, thus limiting business opportunities for EU companies in these markets. In addition, some third countries have maintained or introduced protectionist measures in procurement, which also have negative implications for EU companies, investment and employment in Europe.

Given this situation, we believe that it is imperative to adopt proactive market access initiatives. Their aim should be to restore a level playing field by triggering the opening of third-country public procurement markets, rather than close the European market. This also requires strengthening the EU position in bilateral and international negotiations.

The following key points should be taken into account in the formulation of a proposal:

## Regarding a new EU legal instrument

- BUSINESSEUROPE deems action to improve access to third country markets necessary. Any action should be fully compliant with the EU's international trade obligations and must preclude new distortions to competition or potential for new protectionism. to ensure that EU companies will not face retaliatory measures.
- EU initiatives in this field should be workable from an institutional and legal point of view and should take account of the practical aspects of companies involved in procurement as well as foreign trade. Therefore, EU decision-making procedures should be transparent and efficient for companies. In addition, it should be stressed that public procurement contracts can involve a multitude of companies and subcontractors providing a range of services with a supply chain that is dispersed across the globe.

### Regarding specific aspects of procurement rules

- To avoid a situation where subsidised companies might gain an unfair advantage on the EU market, the Commission should strengthen the legal provisions regarding the assessment and exclusion of abnormally low bids. Also, rules on antidumping should be extended to services and strengthened in the procurement sector. The Commission should reflect on the creation of an updated anti-subsidy instrument applicable to goods and services used in procurement to restore a level playing field;
- It should be stipulated that public authorities have to inform all bidders when a state-owned company from a third country that is not a signatory to the WTO Government Procurement Agreement enters the bidding process. This would give other bidders the time and opportunity to seek effective means of redress prior to the award when they consider that a public authority has decided to award a contract unfairly.

### Regarding information needs

- Regardless of the market access initiatives adopted, there is a need to provide clear information to public procurement authorities across Europe on the EU's international commitments, including specific information on the EU's general notes and derogations to the GPA and third countries' measures in relation to European goods and services.
- To avoid divergences in the treatment of third-country bids and the risk of fragmentation of the Single Market, the EU should issue regular reports on the practices of procurement authorities in the member states.
- Equally, the Commission should inform EU contracting authorities of the countries that have not signed the GPA, do not have bilateral procurement commitments or whose markets are closed to EU companies in some other way. Database updates, for example as part of the Commission's Market Access Database could be sent periodically to the contracting authorities across Europe.

Given the complexity of the issue, these points will require consideration by the Commission as it advances in this policy field. Unreasonable time pressure could jeopardise the quality of the final proposal. We therefore request that you clarify these matters to ensure that this policy will achieve its objective of opening third-country markets and ensuring a level playing field.

Please note that a similar letter has also been sent to Commissioner De Gucht.

Yours sincerely,



Philippe de Buck

