



14 April 2021

STATEMENT ON AN EU INTERNATIONAL PROCUREMENT INSTRUMENT

Public procurement is an important engine for growth in the EU economy. While considered one of the most open procurement markets in the world, this is often not reciprocated by the EU's trading partners. The amended Commission's proposal of 2016 on an "*EU Regulation 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*" seeks to address this issue by giving to the European Commission the leverage to open-up third-countries' public procurement markets. The European Council has developed the proposal further.

Over the past years, developments in the global trading environment have made it clear to the European business community that we cannot wait longer for an effective instrument at EU level that can help promote the EU's market access interests in public procurement towards third countries which still seal off their procurement markets against EU bidders. In this context BusinessEurope would like to support the efforts of the Portuguese Presidency of the European Council towards achieving a common position among the Member States. The amended proposal of the Commission of 2016 already aimed at reaching the right goals, but still suffered from some structural weaknesses. It is our understanding that the draft tabled recently by the Portuguese Presidency marks a big step forward.

From BusinessEurope's perspective it is important that the EU's International Procurement Instrument (IPI):

- **Remains an offensive instrument**, with the objective of opening-up third country public procurement markets that are not accessible to EU operators. In order to be offensive, it should not only provide for price penalties as sanctions, but also contain the option of exclusion of tenders in case of unsuccessful negotiations with a targeted third country. The instrument should not lead to a cancellation of existing national options for exclusion or already existing sanctions and ensure complementary and compliance with EU's existing Directives in public procurement and with the guidance on the participation of third country bidders and goods in the EU procurement market.
- **Is an effective tool** that the European Commission and the national competent authorities will be able to use in practice. The implementation of the Regulation should also take place in a harmonised manner, avoiding any risk of fragmentation in the EU's procurement market.

- **Includes strong anti-circumvention provisions**, for instance by reinforcing ex post monitoring and providing for additional contractual obligations for the winning bidders. This should be conducted in a way that is minimising the administrative burden both for contractual authorities at national level and companies. Furthermore, it is critical to ensure that the provisions for exemptions provided in the Regulation are not shaped in a way that will allow misuses. Insofar, we are particularly concerned about the provision referring to '*disproportionate price increases*', which, as it currently stands, could be used in ways that risk circumvention, thus undermining the effectiveness of the IPI as a leverage instrument as a whole.

We view the EU's IPI as an indispensable instrument that can complement existing EU tools in the trade policy area, but also beyond, including other policy areas and instruments that aim at levelling the playing field in the Single Market. In particular, we have in mind the upcoming instrument on foreign subsidies, which will seek to identify behaviours of foreign economic operators, including SOEs, that may have an adverse impact in the Single Market, including in the area of public procurement.

BusinessEurope is firmly convinced of the urgent need to have the IPI in place. Therefore, we call on all relevant parties to double their efforts to accelerate and conclude the legislative process as soon as possible, taking into consideration the essential aspects mentioned above.