















Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) Regulation</p> <p>2012/0060(COD)</p>	Awaiting committee decision
<p>Public procurement: access of third-country goods and services to the Union's internal market and procedures supporting negotiations on access of Union goods and services to the markets of third countries</p> <p>Repealing Articles 58 and 59 of Directive 2004/17/EC See also Directive 2004/18/EC 2000/0115(COD) See also Directive 2004/17/EC 2000/0117(COD) See also Directive ... 2011/0437(COD)</p> <p>Subject</p> <p>2.10.02 Public procurement 5.03 Global economy and globalisation 6.20.01 Agreements and relations in the context of the World Trade Organization (WTO) 6.20.02 Export/import control, trade defence, trade barriers 6.20.03 Bilateral economic and trade agreements and relations 6.20.04 Union Customs Code, tariffs, preferential arrangements, rules of origin 6.30.01 Generalised scheme of tariff preferences (GSP), rules of origin</p> <p>Legislative priorities Joint Declaration 2021</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 International Trade (Associated committee)	 CASPARY Daniel	18/07/2019
		Shadow rapporteur	
		 RODRÍGUEZ-PIÑERO Inma	
		 SCHREINEMACHER Liesje	
		 BÜTIKOFER Reinhard	
	 BOURGEOIS Geert		
	Former committee responsible		
 International Trade (Associated committee)			22/07/2014
 International Trade (Associated committee)		 CASPARY Daniel	25/04/2012
Committee for opinion		PPE CASPARY Daniel	
 Development		Rapporteur for opinion	Appointed

	EMPL Employment and Social Affairs		
	ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
	IMCO Internal Market and Consumer Protection (Associated committee)		18/07/2019
		 ŠTEFANEK Ivan	
	JURI Legal Affairs		
	Former committee for opinion		
	IMCO Internal Market and Consumer Protection (Associated committee)		21/06/2012
		PPE ENGEL Frank	
	IMCO Internal Market and Consumer Protection (Associated committee)		05/11/2014
		 ŠTEFANEK Ivan	
	DEVE Development		25/09/2012
		Verts/ALE SARGENTINI Judith	
	DEVE Development		
	EMPL Employment and Social Affairs		29/01/2013
		PPE DEUTSCH Tamás	24/05/2013
		PPE DEUTSCH Tamás	
	EMPL Employment and Social Affairs		
	ITRE Industry, Research and Energy		
	ITRE Industry, Research and Energy		
	JURI Legal Affairs		
	JURI Legal Affairs		25/04/2012
		PPE BALDASSARRE Raffaele	
Council of the European Union	Council configuration	Meeting	Date
	Foreign Affairs	3348	21/11/2014
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union	DE GUCHT Karel	
European Economic and Social Committee			
European Committee of the Regions			

Key events			
21/03/2012	Initial legislative proposal published	COM(2012)0124	Summary
20/04/2012	Committee referral announced in Parliament, 1st reading/single reading		
25/10/2012	Referral to associated committees announced in Parliament		
10/12/2013	Committee report tabled for plenary, 1st reading/single reading	A7-0454/2013	Summary
14/01/2014	Debate in Parliament		

15/01/2014	Results of vote in Parliament		
15/01/2014	Decision by Parliament, 1st reading/single reading	T7-0027/2014	Summary
20/10/2014	Committee referral announced in Parliament, 1st reading/single reading		
21/11/2014	Debate in Council	3348	
29/01/2016	Legislative proposal published	COM(2016)0034	Summary
21/10/2019	Committee referral announced in Parliament, 1st reading/single reading		

Technical information

Procedure reference	2012/0060(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealing Articles 58 and 59 of Directive 2004/17/EC See also Directive 2004/18/EC 2000/0115(COD) See also Directive 2004/17/EC 2000/0117(COD) See also Directive ... 2011/0437(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 207
Mandatory consultation of other institutions	European Economic and Social Committee European Committee of the Regions
Stage reached in procedure	Awaiting committee decision
Committee dossier	INTA/9/00039

Documentation gateway

Initial legislative proposal	COM(2012)0124	21/03/2012	EC	Summary
Document attached to the procedure	SWD(2012)0057	21/03/2012	EC	
Document attached to the procedure	SWD(2012)0058	21/03/2012	EC	
Committee report tabled for plenary, 1st reading/single reading	A7-0454/2013	10/12/2013	EP	Summary
Text adopted by Parliament, partial vote at 1st reading/single reading	T7-0027/2014	15/01/2014	EP	Summary
Legislative proposal	COM(2016)0034	29/01/2016	EC	

Additional information

Research document	Briefing
National parliaments	IPEX
European Commission	EUR-Lex

PURPOSE: to improve the conditions under which EU businesses gain access to the public procurement markets of third countries.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: in the negotiations on a revised Government Procurement Agreement (GPA) in the context of the World Trade Organisation (WTO) and in bilateral negotiations with third countries, the EU has advocated an ambitious opening of international public procurement markets. Some EUR 352 billion of EU public procurement is open to bidders from member countries of the WTO agreement on government procurement.

However, many third countries are reluctant to open their procurement markets to international competition. Currently, EU suppliers face manifold restrictive procurement practices in many of the countries that are the EU's main trading partners.

The value of US procurement offered to foreign bidders is currently just EUR 178 billion and EUR 27 billion for Japan, whereas only a fraction of the Chinese public procurement market is open to foreign business.

All in all, more than half of the world's procurement market is currently closed due to protectionist measures and this share is only growing. As a result, only EUR 10 billion of EU exports (0.08% of EU GDP) currently find their way in global procurement markets, whereas an estimated EUR 12 billion of further EU exports remains unrealised due to restrictions.

In contrast, the EU has kept its public procurement market largely open to international competition, despite growing pressure on its domestic market, in particular from emerging economies on certain key sectors (railways, construction, IT services). With the exception of some provisions limited in scope to supply and service contracts in the utilities sector, the EU has not exercised its power to regulate the access of foreign goods, services and companies to the EU's public procurement market.

Given the rising importance of emerging economies, the absence of a level playing field causes many problems. This initiative aims at solving these problems (i) by strengthening the position of the European Union when negotiating access for EU companies to the public procurement markets of third countries, in order to open up our trading partners' markets; (ii) clarifying, for this purpose, the rules governing access by third-country companies, goods and services to the EU's public procurement market.

This initiative implements the Europe 2020 strategy and the [Flagship Initiative on Integrated Industrial Policy for the Globalisation Era](#). It also implements the [Single Market Act](#) and the [Communication on Trade, Growth and World Affairs](#).

IMPACT ASSESSMENT: several options have been considered by the Commission:

- Option 1: not to take any additional action, and continue with business as usual with the international market access negotiations (possibly in a reinforced manner) with the European Union's trading partners.
- Option 2: upgrading the implementation of existing tools under Directive 2004/17/EC (Articles 58 and 59), based on better guidance or an extension of the scope of these tools to cover the entire scope of Directives 2004/17/EC and 2004/18/EC.
- Option 3: close generally or by sector the EU public procurement market to goods, services and suppliers from third countries, subject to the EU's international obligations in this field.
- Option 4: create an autonomous instrument that would strike the right balance between, on the one hand, the need to enhance the Union position in negotiations on market access, and on the other hand, the preservation of a competitive procurement regime in the EU.

The Commission favours the fourth option.

LEGAL BASIS: Article 207 TFEU.

CONTENT: the proposal establishes a comprehensive EU external public procurement policy that governs the access of foreign goods and services to the EU public procurement market and includes mechanisms to encourage the EU's trading partners to start market access discussions.

The main points of the proposal are as follows:

Goods and services benefiting from EU commitments: the proposal reflects in EU legislation the principle that, on the EU's internal market in procurement, goods and services benefiting from market access commitments are treated equally to EU goods and services and it extends this treatment to goods and services originating in least-developed countries.

Goods and services not benefiting from market access commitments: for contracts with an estimated value equal or above EUR 5 million, the Commission may approve Contracting authorities/entities excluding tenders where the value of non-covered goods and services exceeds 50% of the total value of goods and services included in the tender.

After informing potential tenderers, in the contract notice, of its intention to exclude such tenders, a contracting authority/entity has to notify the Commission when it receives tenders that fall into this category. The Commission would give its approval to the exclusion if there is a lack of substantial reciprocity in market opening between the EU and the country from which the goods and/or services originate. The Commission will approve the exclusion where the goods and services concerned fall within the scope of a market reservation by the EU in an international agreement.

EU mechanism to increase leverage on market access: the Commission may (i) conduct investigations to verify the existence of restrictive procurement practices; (ii) invite the country concerned to enter into consultation in order to address such restrictive practices and thereby create a better market access situation for EU companies; (iii) temporarily restrict the access of goods and/or services from that country to the EU public procurement market.

Such measures may in principle consist of (i) the disqualification of certain tenders made up for more than 50% of goods or services originating in the country concerned; and/or (ii) a mandatory price penalty on those goods or services tendered which originate in the country concerned.

Abnormally low tenders: as a complement to the provisions on abnormally low tenders in the proposed reform of the public procurement directives, contracting authorities/entities will be required to inform the other tenderers when they intend to accept abnormally low tenders where the value of non-covered goods and services exceeds 50% of the total value of goods and services included in the tender.

BUDGETARY IMPLICATIONS: the proposal does not have budgetary implications. The additional tasks for the Commission can be met with

existing resources.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

2012/0060(COD) - 10/12/2013 Committee report tabled for plenary, 1st reading/single reading

The Committee on International Trade adopted the report by Daniel CASPARY (EPP, DE) on the proposal for a regulation of the European Parliament and of the Council on the access of third-country goods and services to the Unions internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

The Committee on the Internal Market and Consumer Protection, exercising its prerogatives as an association committee in accordance with [Rule 50 of the Parliaments Rules of Procedure](#), was also consulted for an opinion on the report.

The committee recommended that Parliaments position adopted in first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

A sustainable industry policy strategy in the Union: the committee stressed the need to exclude unfair tenders comprising goods and/or services originating outside the Union. At the same time, reciprocity and fair conditions for the market access of Union industries should be ensured.

Keep the principle of uniformity of the Common Commercial Policy (CCP): to prevent distortion of the internal market, and ensure efficient leverage through the CCP, Members stated that that Member States or their contracting authorities may restrict the access of third country goods and services to their tendering procedures only by measures provided for in the Regulation or by relevant Union law, and only after an investigation by the Commission has revealed the absence of substantial reciprocity by the third country concerned.

Scope: the Regulation shall apply to the award of contracts and to the award of concessions for services provided for governmental purposes.

It is proposed to exclude from the scope of the Regulation developing countries considered to be vulnerable due to a lack of diversification and insufficient integration within the international trading system as well as countries and potential GSP+ beneficiary countries.

Rules of origin: the determination of the origin of a service should be made in line with the principles of the WTO General Agreement on Trade in Services (GATS). The provisions determining the rules of origin of services should prevent the circumvention of restrictions on access to the Union public procurement market through the establishment of "letterbox" companies.

Procedure: Members wanted to ensure that the term 'calendar days' is consistently used throughout the proposal instead of 'days', 'calendar days' and 'working days'. They also shortened the length of the procedures throughout the proposal to provide faster protection, and made amendments intended to avoid an endless consultation procedure with third countries.

Public contracts: in the performance of public contracts economic operators must comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions.

A lack of substantial reciprocity shall be presumed, where the non-observance of international labour law provisions listed in the [Directive on public procurement](#).

Assess impact and review the instrument: the report proposes incorporating a review clause, which obliges the Commission to look into the impact of the regulation, after it has come into force and being applied for a few years. Accordingly, when the Commission submits its second report, it shall also submit a legislative proposal for an amended Regulation or set out the reasons why, in its view, no changes are necessary.

For the same reason, the report suggests limiting the application of any restrictive measures taken through an implementing act to up to 5 years so as to avoid these measures turning into a permanent closure of the market.

2012/0060(COD) - 15/01/2014 Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted amendments to the proposal for a regulation of the European Parliament and of the Council on the access of third-country goods and services to the Unions internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

The matter was referred back to the committee responsible for further consideration. The vote was put back to a later session.

A sustainable industry policy strategy in the Union: Parliament stressed the need to exclude unfair tenders comprising goods and/or services originating outside the Union. At the same time, reciprocity and fair conditions for the market access of Union industries should be ensured.

Union trade policy should help to reduce poverty worldwide by promoting improved working conditions, health and safety at work and fundamental rights.

Keep the principle of uniformity of the Common Commercial Policy (CCP): Parliament stated that that Member States or their contracting authorities may restrict the access of third country goods and services to their tendering procedures only by measures provided for in the Regulation or by relevant Union law, and only after an investigation by the Commission has revealed the absence of substantial reciprocity by the third country concerned.

Lack of substantial reciprocity is defined as the existence of any legislative, regulatory or administrative measure, procedure or practice, adopted or performed by public authorities or individual procuring entities in a third country, restricting access to public procurement or concession markets, in particular by a lack of transparency compared to international standards and discriminatory legislative provisions and administrative practices, which results in serious and recurrent discriminatory treatment against Union economic operators, goods or services.

Scope: the Regulation shall apply to the award of contracts and to the award of concessions for services provided for governmental purposes. It is recalled that the Regulation will apply to contracts with an estimated value equal or above EUR 5 000 000 exclusive of value-added tax (VAT). Tenders comprising goods and/or services originating outside the European Union, in which the value of the non-covered goods or services exceeds 50 % of the total value of these goods or services are normally excluded.

Parliament proposed to exclude from the scope of the Regulation developing countries considered vulnerable due to a lack of diversification and insufficient integration within the international trading system as well as countries and potential GSP+ beneficiary countries.

Rules of origin: the determination of the origin of a service should be made in line with the principles of the WTO General Agreement on Trade in Services (GATS). The provisions determining the rules of origin of services should prevent the circumvention of restrictions on access to the Union public procurement market through the establishment of "letterbox" companies.

Procedure: Members wanted to ensure that the term 'calendar days' is consistently used throughout the proposal instead of 'days', 'calendar days' and 'working days'. They also shortened the length of the procedures throughout the proposal to provide faster protection, and made amendments intended to avoid an endless consultation procedure with third countries.

Observance of social and environmental standards: in the performance of public contracts economic operators must comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions.

A lack of substantial reciprocity shall be presumed, where there is non-observance of international labour law provisions listed in the [Directive on public procurement](#).

Assess impact and review the instrument: Parliament proposes incorporating a review clause, which obliges the Commission to look into the impact of the regulation, after it has come into force and being applied for a few years. Accordingly, when the Commission submits its second report, it shall also submit a legislative proposal for an amended Regulation or set out the reasons why, in its view, no changes are necessary.

For the same reason, Parliament suggests limiting the application of any restrictive measures taken through an implementing act to up to 5 years (which may be extended for 5 years) so as to avoid these measures turning into a permanent closure of the market.

2012/0060(COD) - 29/01/2016 Legislative proposal

PURPOSE: to establish measures aiming to improve the access of third-country goods and services to the Unions internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: while the EU public procurement market is open to foreign bidders, the procurement markets for foreign goods and services in third countries remain to a large extent closed de iure or de facto. The IPI aims at encouraging partners to engage in negotiations and opening participation for EU bidders and goods in third countries' tenders.

Many third countries are reluctant to open their procurement markets to international competition or to open those markets further than what they have already done. The value of US procurement offered to foreign bidders is currently just EUR 178 billion and EUR 27 billion for Japan, whereas only a fraction of the Chinese public procurement market is open to foreign business. The Commission stated that, all in all, more than half of the world's procurement market is currently closed due to protectionist measures and this share is only growing. As a result, only EUR 10 billion of EU exports (0.08% of EU GDP) currently find their way in global procurement markets, whereas an estimated EUR 12 billion of further EU exports remains unrealised due to restrictions.

Some EUR 352 billion of EU public procurement is open to bidders from member countries of the GPA. However, some important economic players like China, Brazil or India are not yet parties to the agreement and some of the existing parties have limited coverage of procurement in their schedules.

The Commission adopted in March 2012 its initial proposal for an international procurement instrument which sought to encourage partners to engage in negotiations and opening participation for EU bidders and goods in third countries' tenders. This initial proposal was discussed in the European Parliament and in the Council, without, however, concluding the first reading.

Since the launch of the IPI proposal in 2012, important trade negotiations have started, with the US (TTIP), Japan (FTA) or continued, such as for China (to join the GPA). The Commission considered that the adoption of the IPI would send a strong signal to these and other partners and would encourage negotiators to accelerate and pursue a substantial opening of their procurement markets.

In view of the fact that there appears to be broad agreement that an imbalance currently exists between the openness of the EU procurement market and third country procurement markets and that European companies should enjoy better access to procurement opportunities abroad, the Commission decided to review its initial proposal in order to respond to some of the concerns both legislative organs of the EU have expressed while ensuring that the revised proposal still provides the EU with better leverage in its negotiations to open foreign procurement markets.

IMPACT ASSESSMENT: the Commission's Impact Assessment Board (IAB) has issued two opinions on the impact assessment report. The amendments now put forward aim at making the instrument more targeted and more easily applicable in practice while further limiting the potential negative effects that were identified in the impact assessment report.

As regards effectiveness,

- the amended proposal will still meet the initial objective to clarify the applicable rules, and the Commission will continue having the final say on the use of restrictive measures;
- with the deletion of the decentralised pillar, the application of the rules will be simpler and further harmonised, and the margin of error

- caused by contracting authorities/entities applying the restrictive measures will be reduced;
- the reduction of time limits for the Commission's investigation will ensure that there is earlier clarity on whether or not restrictive measures will be taken.

As regards efficiency: the proposed amendments reduce the administrative burden:

- the impact assessment estimated the costs in relation to the notification process of the decentralised procedure to amount to EUR3.5 million. The deletion of the decentralised pillar, including its time limits, abolishes all potential risks linked to the notification process identified in the impact assessment;
- the proposed amendments will allow to target those territories of a third country which are actually responsible for the discriminatory measures without the need to target the third country as a whole. This possibility for more targeted and justifiable measures will further reduce the risk for retaliation.

CONTENT: the revised proposal from the Commission seeks to put in place an International Procurement Instrument (IPI). This is the EU response to the lack of level playing field in world procurement markets.

The amendments presented in this proposal aim at increasing the effects of the instrument upon third countries while eliminating the potentially negative consequences of the instrument in its original form, such as the possibility to close the EU procurement market completely to a trading partner, the administrative burden related to the application of the instrument and the risk of fragmentation of the internal market.

At the same time, the proposal focuses on the role of the Commission to investigate procurement barriers in third countries and provides the tools to engage with third countries towards their removal.

More specifically, the proposal:

- deletes the possibility to close the market and to limit possible restrictive measures to price penalties now called price adjustment measures. Following a Commission investigation, when it is determined that a country applies barriers to EU participation in procurement, a price adjustment would be applied to bidders or products or services from that country. Contrary to the initial proposal, foreign bidders and products and services subject to a price adjustment measure for evaluation purposes could still be awarded the contract, if despite the price adjustment the offer remains competitive in terms of price and quality;
- eliminates the possibility for contracting authorities to decide autonomously a prohibition on foreign bidders' participation in their tenders by deleting the decentralised pillar;
- establishes a presumption that tenders submitted by companies originating in the targeted third country will be targeted by the price penalty, unless they can demonstrate that less than 50% of the total value of their tender is made up of non-covered goods and services originating in this third country. While in the original proposal contracting authorities bore the burden of proof, it is now borne by the bidder;
- reduces the administrative burden further by allowing Member States to indicate which of their procuring entities will be required to implement the price adjustment measure;
- provide that the price adjustment measure would not be applicable in relation to European small and medium-sized enterprises (SMEs) and bidders and products originating from developing countries subject to GSP+ treatment;
- introduce a new provision allowing targeting territories at regional or local level, like states, regions or even municipalities;
- shortens the time for the Commission's investigation in the centralised procedure;
- makes public the findings of the Commission investigations identifying barriers to tenders in third countries;
- clarifies that the instrument will apply to all procurement and concessions which are covered by the [EU procurement](#) and [concession](#) directives adopted in February 2014 (which excludes for example concessions regarding water supply services).