

Reciprocal access to public procurement markets

Effective trade defence instruments are fundamental to the new EU trade policy set out in the Europe 2020 strategy for smart, sustainable and inclusive growth. The proposed regulation would establish the possibility to restrict access to the European Union's internal market in public procurement of goods and services to entities from third countries which do not provide similar access to EU firms. The European Commission (EC) aims to create leverage for the EU in trade negotiations, and so improve conditions for access by EU business to government contracts in third countries.

Existing legal framework

The World Trade Organisation's plurilateral [Government Procurement Agreement](#) (GPA) (in force since 1996), guarantees reciprocal opening of public procurement markets for a certain number of entities and sectors amongst its 15 [parties](#) (including the EU). The EU has also concluded several international [agreements](#) which contain commitments on PP market access. For countries outside those legal frameworks, including the majority of emerging countries hesitant to join the GPA, access to EU market is not prohibited, but not guaranteed either. Except in defence procurement and the utilities sector, where Member States can decide whether to accept bids from third countries, [EU Directives](#) set rules and procedures opening up the public procurement market in order to get best value for public spending. [Modernisation](#) of the 2004 public procurement rules is in its final stages.

European Commission proposal

Under the current [proposal for a regulation](#) on access for third-country goods and services to the EU internal market in public procurement, MS' contracting authorities/entities would be entitled to exclude, after approval from the EC, tenders from countries which do not provide substantial reciprocity in public procurement market opening.

The proposed instrument could be used in cases of public tenders worth €5 million or more, and in which at least 50% of the total value of the goods or services offered originates from third countries without an international agreement covering public procurement with the EU. Goods and services from least developed countries (LDC) are excluded from the scope of the proposal. The EC would also have the right, on its own initiative or on request of a Member State or interested party, to investigate restrictive procurement measures by third countries. This could lead to adoption of restrictive measures disqualifying or penalising tenders originating in the third country concerned, but only after consultations with that country had failed to establish a plan to remove such restrictive practices.

European Parliament's position

In its 2011 [resolution](#) on [new trade policy](#) for Europe the EP called for positive reciprocity in international procurement markets, underlining that the priority is not to close EU markets but to open up foreign PP markets to EU businesses.

On 28 November 2013, the International Trade (INTA) Committee [approved](#) the amended proposal (rapporteur Daniel Caspary, EPP, Germany). The Committee recommends that MS contracting authorities only be able to restrict access to their country's tenders using the measures in EU law, and only if an investigation on a "lack of substantial reciprocity" has been launched by the EC. The Committee also proposes that "lack of substantial reciprocity" could be established when international labour standards are breached. Moreover, INTA voted to exclude, in addition to the LDCs, developing countries considered

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vulnerable due to lack of diversification and insufficient integration in the international trading system from the scope of the regulation.

Controversy

The proposed regulation has given rise to debate both on its basis and its effects.

The EC justified its proposal through imbalances in market access, between EU markets claimed to be wide open and many third countries', described as closed. [According](#) to the EC nearly 85% of EU public procurement markets are potentially open, while this figure drops to 32% in the case of the US, and 28% for Japan. In practice, the [share of imports in the public sector](#) is 7.5% in the EU, 6.1% in China, 4.6% in the US, and 4.7% in Japan.

However, [some](#) commentators point out that the EU figure includes both intra-EU and extra-EU imports, with the latter representing just a small part of the figure: 2.7% in Germany and 2.3% in France. They conclude that, if a method distinguishing accurately between extra- and intra-EU exports is used, the EU is *de facto* significantly less open than some emerging economies targeted by the EC's proposal. The EC responds that the WTO standard for measuring market openness is *de jure* openness, as *de facto* openness depends on many factors such as the competitiveness of the sector and the openness to FDI of a given country - both of which rank very high in the EU.

The potential effects of the proposed regulation divide opinion both among Member States (France and Italy considered in favour, with some 15 others against) and between industries (the construction industries are in favour, while industries selling goods on world markets are more reticent). Opponents [point](#) at less efficient use of public funds, possible retaliation against EU industry and damages to the EU's image as a promoter of liberalisation, as well as "red tape" effects. Supporters stress the stronger EU position in international negotiations leading at the end to progressive opening of global public procurement markets, and avoiding fragmentation in the internal market due to restrictive measures already taken by individual MS. The new regulation would supersede national measures taken to restrict access to public procurement markets and thereby contribute to maintaining the unity of the Common Commercial Policy.