ESF21-01

Mr. Augusto Santos Silva
Minister of Foreign Affairs
Ministry of Foreign Affairs
Largo do Rilvas,
1399-030 Lisboa
Portugal

Brussels, 23 April 2021

Subject: **ESF Call for a swift adoption of the Regulation for an International public Procurement Instrument (IPI)**

Dear Minister Santos Silva,

The European Services Forum (ESF) is the European private sector organisation that represents the interests of the European services industries in international trade and investment negotiations. It comprises major European service businesses and European service sector federations covering service sectors including (but not limited to) financial services, telecommunications and IT services, maritime transport, postal and express delivery services, business and professional services, construction, distribution, and audio-visual services.

I am writing to you to express our support for a swift adoption of the Regulation of the European Parliament and of the Council 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"[1].

Services sectors contribute for a significant share in providing high quality services to the EU public entities. According to WTO GPA reports, **40.4%** of the total expenditures in public procurement by the EU 28 member states and the EU institutions **were in services activities** in 2016; 32.3% in construction works and 27.3% in goods supplies.

But there is only few or no data on the share of these three components in the **international** public procurement. Or on the contribution of foreign affiliates to the national tenders. ESF calls upon the European institutions to do their utmost to initiate better collection of statistical datal so as to measure the importance of getting access to third countries' public procurement and to assess whether concessions in international trade agreements or specific international procurement agreements provide effective new market access to foreign investors and exporters into the EU and new market access to EU services investors and exporters to third trading countries.

The EU public procurement market is one of the largest and most accessible in the world. In Europe, companies from other countries can bid for public tenders on an equal footing with European companies.

Improved access to third countries' public procurement markets is of great interest to competitive and growth-oriented EU service businesses eager to gain access to new markets. However, European businesses cannot always get equal access to public procurement markets outside the EU. Many countries are reluctant to open their public procurement markets to international competition. This creates an uneven playing field for EU companies and limits business opportunities in these markets.

[1] *COM(2016)34 final of 29 January 2016, known as IPI Regulation's Proposal*

This is not acceptable any more. Of course the **EU public procurement must remain open** as far as possible with the countries that allow a reciprocal access to their own market. This openness has greatly contributed to improve EU public services whith the best innovative goods and services while ensuring efficient management of tax payers contribution and strengthening competitiveness in the EU. But for the other countries, it is time for the EU to put into motion its new "assertive and open strategic autonomy". ESF believes that the IPI proposal is one of the tools that can contribute in achieving such objective.

The European Services Forum **supports the general objective for the setting up of an instrument to support negotiations** on access of EU goods and services **to the public procurement markets of third countries**.

We consider as well that one of the main objectives of the new instrument should be to ensure that bidders from third countries - which are closed to European bidders and which are often heavily relying on subsidies from their own government or national authorities - do not distort the EU's public procurement market.

We want to draw the attention on the fact that many countries which are GPA signatories or FTA partners do not always fully apply their obligations. ESF considers that the IPI should be **a tool that catch all countries that do not allow access to their public procurement in a really reciprocal manner**.

ESF supports the fact that the proposed regulation focuses on the role of the Commission to **investigate procurement barriers in third countries**. The new Instrument will allow the Commission to initiate public investigations in cases of alleged discrimination of EU companies in third countries' procurement markets. While in the original proposal contracting authorities bore the **burden of proof, it is now borne by the bidder**, who has to demonstrate that less than 50 % of the total value of its tender is made of goods and services originating in the third country concerned. ESF welcomes the simplification of the administrative burden for all actors. Potentially, the price adjustment would result in a competitive advantage on EU public procurement markets for EU and non-targeted countries' tenders, and hence a **disadvantage for the bidders from closed countries**.

ESF takes note of the exclusion of the most vulnerable developing countries from the scope of the instrument. Indeed very few operators, in particular related to provision of services, from these countries participate to EU tenders. Similarly, we support the fact that the price adjustment measure of regulation will **not apply to tenders submitted by European SMEs**, which would have been discouraged by the induced administrative burden.

The European Services Forum welcomes the work undertaken on this Proposal under the Portuguese Presidency to the Council as a positive move on this important file, and reserves the right to come back on the content of the compromise text, when available. Meanwhile, ESF calls upon the Council's Working Party on Trade Questions to work intensively with their European Parliament's counterparts so as to adopt swiftly the new IPI regulation that will contribute in opening up new market for European services companies in third countries.

You can find more details on our assessment and priorities on the regulation's proposal in the Background document attached. ESF and its members remain at your disposal to discuss our recommendations.

Yours sincerely,

Noel Clehane

Noel Clehane
ESF Chairman

List of members supporting the above position

- Amfori
- Architects' Council of Europe –ACE
- British Telecom Plc
- BDO
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- BSA The Software Alliance – BSA
- Conseil des barreaux de la Communauté Européenne – CCBE
- Danish Shipping
- Deutsche Post DHL
- DI – Confederation of Danish Industries
- Digital Europe
- EK - Confederation of Finnish Industries
- EuroCommerce
- European Banking Federation - EBF
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- European Federation of Engineering and Consultancy Associations – EFCA
- European Satellite Operators Association – ESOA
- European Public Telecom Network – ETNO
- European University Association – EUA
- Fédération de l'Industrie Européenne de la Construction – FIEC
- FratiniVergano European Lawyers
- General Council of the Bar of England & Wales
- Google
- Huawei Europe
- IBM Europe, Middle East & Africa
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des entreprises de France – MEDEF
- Oracle Europe, Middle East & Africa
- Orange
- PostEurop
- Prudential Plc.
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- TechUK
- Telenor Group
- TheCityUK
- UPS
- Vodafone
- Zurich Insurance

BACKGROUND PAPER ON SERVICES & PUBLIC PROCUREMENT & INTERNATIONAL PROCUREMENT INSTRUMENT (IPI)

INTRODUCTION:

A. EU public procurement market is vast and open:

Public procurement is of high importance to the European economy. Over 250.000 public authorities around the EU purchase goods, services, works and supplies amounting to around **€2 trillion every year**, accounting for approximately 14% of EU GDP in 2017.[1] Hence, public procurement highly contributes to the EU economy growth and create and maintain many employment, including in the services sectors.

The EU public procurement market is one of the largest and most accessible in the world. In Europe, companies from other countries can bid for public tenders on an equal footing with European companies. Within the EU, the Netherlands, Finland and Sweden had the highest levels of public procurement and Cyprus, Ireland and Portugal the lowest. Furthermore, it is widely recognised that the EU's public procurement market is transparent and comparatively open to foreign bidders in practice. It is acknowledged that foreign bidders from third countries that have neither signed the WTO Government Procurement Agreement (GPA) nor a bilateral FTA with the EU are *de facto* very often allowed to bid on public contracts in the EU, even if *de jure*, they do not have secured access to procurement procedures in the EU and may be excluded[2].

B. The importance of international public procurement for the European services sectors

The services sectors are major players in public procurements. There are obviously the construction services and related services like architecture services, civil engineering services, urban planning, etc. which play a crucial role in building infrastructures like roads and highways, rails, airports, public buildings like hospitals, universities, schools, all the administrations' offices, etc. The environmental services like water management and sewage services, waste management services, etc. are also often run with private operators through public private partnerships. The same is true for the public transport services, being by rail or buses, in cities, regions or nation-wide. Furthermore, all public administrations and entities also need for their daily activities to procure many services, like telecom and IT services, insurance and banking services, transport and logistic services, cleaning and catering services, legal and accounting services, etc. One can see in the table attached the list of services bought by public entities, as classified by the European Union.

Therefore, if we take the procurements in "works" (construction of infrastructures) and in "services", the issue of public procurement is of major importance for the services sectors when we look at the international dimension of public procurement.

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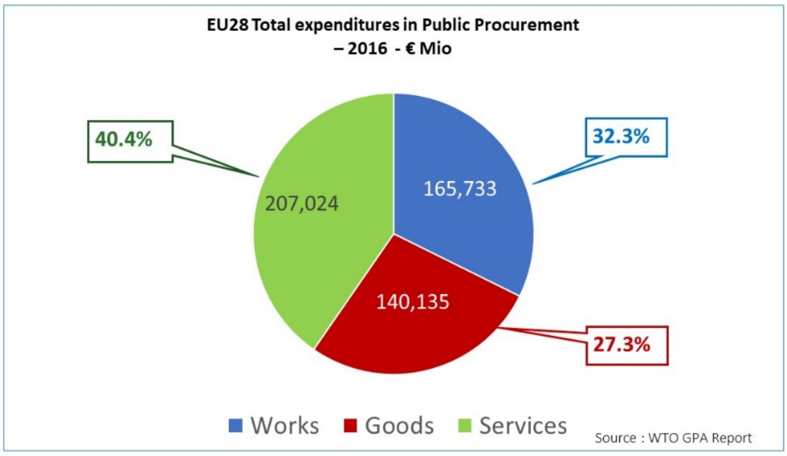
[1] *European Commission, "Public Procurement".*

[2] *See the Communication of the Commission: Guidance on the participation of third country bidders, and goods in the EU procurement market, dated 24.07.2019.*

It is difficult to find statistical data on that issue of the distribution of the public procurement per sectors where the volume of tenders is bought by the public entities. If we look at the WTO GPA Reports, the figures are even more important for services: **40.4%** of the total expenditures in public procurement by the EU 28 member states and the EU institutions **were in services** in 2016; 32.3% in construction works and 27.3% in goods supplies. It is important to specify that "Architectural services; engineering services and integrated engineering services, urban planning and landscape architectural services" are included in services. All other construction services (and the material used for construction) are under CPV 45 corresponding to CPC 51 (UN Central Product Classification – see table attached and WTO MTN.GNS/W/120) and therefore included in the figures of "works" category.



But there is only few or no data on the contribution of these three components in the **international** public procurement. Or on the contribution of foreign affiliates to the national tenders. ESF calls upon the European institutions to do their utmost to initiate better collection of statistical data so as to measure the importance of getting access to third countries public procurement and to assess whether concessions in international trade agreements or specific international procurement agreement provide effective new market access to foreign investors and exporters into the EU and new market access to EU services investors and exporters to third trading countries.

I. HISTORICAL BACKGROUND OF EU PROPOSAL ON INTERNATIONAL PROCUREMENT INSTRUMENT

Improved access to third countries' public procurement markets is of interest to competitive and growth-oriented EU businesses eager to gain access to new markets. However, European businesses cannot always get equal access to public procurement markets outside the EU. Many countries are reluctant to open their public procurement markets to international competition. This creates an uneven playing field for EU companies and limits business opportunities in these markets.

A. WTO Government Procurement Agreement (GPA)

The Agreement on Government Procurement (GPA) is a plurilateral agreement in the WTO on the subject of government procurement (not all WTO members are parties to the GPA). The Agreement had been negotiated in parallel with the Uruguay Round in 1994 and entered into force on 1 January 1996. GPA has only 21 signatory parties comprising 48 WTO members (including the US, Canada, Japan, the EU and more recently the UK) but not including major emerging economies such as Brazil, China, India, Russia and Turkey. Under the GPA, parties agree to abide by the principles of non-discrimination and national treatment (i.e. treat third countries as your own). Each signatory party sets out in their own coverage schedules which a) procuring entities, b) goods, services and construction services and c) threshold values they agree to liberalise under the GPA and which exceptions they wish to retain. Hence, the GPA does not cover all levels of government systematically, and some of the parties have limited coverage of procurement in their schedules (see more here on the WTO website, including the countries' respective schedules).

The revision of the WTO Government Procurement Agreement (GPA) was signed on 30 March 2012 and entered into force on 6 April 2014. It provides a higher level of clarity and transparency and guarantees equal footing to suppliers, supplies and services originating in GPA Parties in procurement procedures. It also offered some €80-100 billion a year of additional business opportunities by further opening up public procurement markets in the 48 countries that are part of the agreement.

The European Services Forum supports, since its inception in 1999, EU efforts at opening more the public procurement markets outside the EU. The EU is a signatory of the WTO Agreement on Government Procurement (GPA) and contributed to improve its scope with the other parties in 2014. However, according to the European Commission, in 2018 the EU had opened de jure some €352 billion worth of its €2 trillion public procurement of goods, services and works markets to bidders from GPA signatories. The World Bank estimated in March 2020 that the annual global expenditure in procurement is estimated at nearly 9.5 trillion US dollars. But it is assessed that more than half of that worldwide procurement market is closed to European companies. This is a clear evidence that in many countries **EU bidders are excluded from public tenders**.

B. EU Bilateral Trade Policy and public procurement

Alongside regulating the EU's internal public procurement market, and the above-described GPA, the EU also aims at opening more the public procurement markets outside the EU. In its trade agreements, the EU and its trading partners offer each other access to procurement by certain public authorities and bodies for certain works, goods and services to encourage more open and balanced international markets.

Rules about public procurement have already been included in many EU free trade agreements (FTAs) with more or less success, with the most recent one like with Canada, Japan and the UK offering real new opportunities for European businesses (see list here). Furthermore, negotiations are ongoing with several regions and countries and are expected to open public procurement markets, notably with Australia , Azerbaijan, Indonesia , New Zealand, Tunisia, and Uzbekistan. ESF will continue to work with the EU negotiators to support these efforts. But it is clear that **trade policy pace is slow and other additional routes should be explored**.

C. A very large part of global public procurement remains close to EU bidders.

Government procurement typically accounts for roughly 10 to 20 % of an average economy's GDP Government procurement expenditure was about Japan 16.2 % and United States 9.4 %. However, it is estimated that more than half of the EUR 8 trillion worldwide procurement market is closed to European companies. European businesses would only win a minuscule fraction – EUR 10 billion/0.1% – of global procurement contracts.[3]

The Commission estimates that half the global procurement market is currently closed to foreign bidders but that greater access could more than double EU procurement exports by adding €12 billion to the existing €10 billion in exports (i.e. tenders won by EU companies abroad). Common

[3] *European Commission, "Factsheet on the International Procurement Instrument", 2019.*

barriers and difficulties faced by EU companies abroad are a lack of transparency (e.g. no online publication of notices or fragmented procedures), requirement for national establishment such as joint ventures (China, Indonesia) or local establishment (Brazil, Indonesia), local origin requirements (India 50 %, Indonesia 50 %) or the Buy Chinese policy and Buy American/America regulation, or the exclusion of major government procurement projects (e.g. Three Gorges Dam, Bird's Nest and other 2008 Olympic Venues in China).

This is not acceptable anymore. Of course, the **EU public procurement must remain open** as far as possible with the countries that allow a reciprocal access to their own market. This openness has greatly contributed to improve EU public services with the best innovative goods and services while ensuring efficient management of taxpayers' contribution and strengthening competitiveness in the EU. But for the other countries, it is time for the EU to put into motion its new "assertive and open strategic autonomy". ESF believes that the IPI proposal is one of the tools that can contribute in achieving such objective.

D. The need for a new European tool

Taking all of the above into consideration, the European Commission suggested the need to set up an International Procurement Instrument (IPI)[4], as the EU response to the lack of level playing field in world procurement markets. The Commission adopted on 21 March 2012 a proposal for a 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" (COM (2012) 124 final).

The political situation in the EU was however not ripe and it took four years for the proposal to come back on the political agenda of the EU institutions. An amended proposal was adopted in January 2016 (COM(2016) 34 final). It suggested a new set of tools in the area of public procurement to ensure more opportunities and greater fairness for EU businesses competing internationally. The proposal provides the Commission with leverage to engage countries outside the EU in negotiations to further open their public procurement markets.

II. THE PROPOSAL FOR AN INTERNATIONAL PROCUREMENT INSTRUMENT (IPI)

A. A long and complex legislative process

The original Commission's 2012 proposal targeted only "non-covered procurement", i.e. goods and services that are not subject to an international agreement on procurement between the EU and a third country. Covered procurement was not targeted by the proposal, as it was subject to international commitments (article 4). For non-covered procurement, the proposal would have introduced two distinct procedures – a decentralised and a centralised one – for the introduction of restrictions to the EU's procurement market. Under the decentralised pillar, procuring entity could have requested the Commission's approval to exclude a tender from tendering procedures (article 6) as long as its estimated total value, net of VAT, was equal to or above €5 million, and the proportion of non-covered goods constituting the tender was at least 50 % of its total value. Under

[4] *Please note that the International Public procurement Instrument (IPI) should not be confused by IPPI: Reliable statistical data on procurement is challenging to obtain, as a result in part of differing accounting standards. In 2019, to address this issue, the European Commission launched the International Public Procurement Initiative (IPPI). The Commission's new database provides detailed data on government contracts, including barriers that EU companies face. The database includes information on nearly 40 million public contracts. The database covers nine key EU trading partners: Australia, Brazil, Canada, China, India, Indonesia, New Zealand, Thailand and the United States.*

the centralised pillar, the Commission would investigate alleged restrictive procurement measures in a third country. Other key provisions covered abnormally low-priced tenders (article 7) and exceptions (article 13).

The initial proposal was considered rather burdensome to implement, notably as it contained two different procedures for launching a potential closure of EU procurement markets, one bottom-up driven by Member States' competent authorities and one driven by the European Commission.

Reactions to the Commission's proposal in the European Council were mixed. A block of Member States was supporting the proposal, but it also encountered opposition on ideological grounds from an equally important block of Member States, who did not see measures to restrict access to the EU market as the right tool to encourage third countries to open up, fearing, on the contrary, the risk of escalating trade protectionist measures. The Council was not able to break this deadlock and advance discussions on the substance of the proposal.

The European Parliament on 15 January 2014 adopted 85 amendments to the Commission's proposal, suggested by the leading Committee on International Trade (INTA), without, however, adopting a legislative resolution and hence without closing the 1st reading. With these amendments, Parliament tried to build a bridge between proponents and opponents of the proposal. The Parliament gave a mandate to the rapporteur to enter into negotiations with the Council of the European Union. The Commission's Work Programme for 2015 announced that the proposal would be amended in line with the priorities of the current Commission to simplify the procedures, to shorten investigations and to reduce the number of actors involved in implementation.

The deadlock in negotiations on the 2012 proposal led the European Commission to present an amended proposal on 29 January 2016. The amended proposal on a new EU international procurement instrument aims to eliminate all possible negative consequences of the original proposal, in particular the total closure of the EU procurement market, the administrative burden and the risk of the fragmentation of the Internal Market.

INTA Coordinators on 27 February 2017 decided to put the item back on the agenda of INTA with the aim of updating the negotiating mandate by bringing forward to vote further amendments, as the revised proposal included significant changes. The INTA Rapporteur, MEP Daniel Caspary (EPP – DE) issued his Draft report on the amended proposal on 13 September 2017. Amendments to this report in 1st reading were tabled in March 2018 (here). But INTA Committee didn't vote on this report and amendments.

The European Commission adopted its "EU-China – A Strategic outlook" on 12 March 2019, where it urged the Parliament and Council to adopt the IPI regulation before the end of 2019 (see Action 6). In the conclusions adopted following the European Council meeting from 21-22 March 2019, EU leaders stressed that the EU needed to protect its own interests, considering unfair trade practices from third countries: *"The EU must also safeguard its interests in the light of unfair practices of third countries, making full use of trade defense instruments and our public procurement rules, as well as ensuring effective reciprocity for public procurement with third countries. The European Council calls for resuming discussions on the EU's international procurement instrument."*

The new Parliament (session 2019-2024) confirmed MEP Caspary as Rapporteur in the new INTA on 18 July 2019. INTA is expected to vote on the draft report in the coming months and a 1st reading vote in EP plenary by the first half of 2021. The Council will then need to give its opinion on this 1st reading in the course of 2021, followed by a second reading in the EP. We understand that the

Council experts in the Working Party on Trade Questions are expected to discuss the amended proposal for an International Procurement Instrument (IPI) on 8 March 2021. A final legislative act is not expected before 2022.

B. The content of the IPI Proposal

First, it is important to note that the International Procurement Instrument confirms the principle of openness of public procurement markets. "Closed procurement markets undermine competition and transparency, increase the costs of public goods and services for taxpayers and also increase the risk of corruption" says the European Commission Press statement on 29 January 2016. "Opening up non-EU markets for European companies would lead to public savings, creating a win-win situation for jobs and growth in the EU and the tender country in question".

At the same time, it aims to strengthen the position of the EU when negotiating access for EU businesses to the public procurement markets of non-EU countries and to clarify the legal situation for foreign bidders, goods, and services participating in the EU market.

The new Instrument would allow the Commission to initiate public investigations in cases of alleged discrimination of EU companies in procurement markets. In case such an investigation would find discriminatory restrictions vis-à-vis EU goods, services and/or suppliers, the Commission will invite the country concerned to consult on the opening of its own national procurement market. Such consultations can also take place in the form of negotiations on an international agreement.

As a last resort where the country concerned does not want to conclude such an international agreement, the Commission could, after consultation with EU Member States, apply the new tool. This means that bids consisting of goods and services from the country concerned would, while compared to other bids, be considered as offering a higher price than the one they have put forward, thus providing European and non-targeted countries' goods and services a competitive advantage. To avoid the application of this tool, third countries have only to stop such discriminatory practices.

The amended proposal focuses on the role of the Commission to investigate procurement barriers in third countries, and provides tool to engage with third countries to remove them. The revised proposal deletes the 'decentralized procedure' from the original proposal, while keeping the option to impose a price penalty under certain conditions.

The Key elements of the proposal are the following:

1. It only keeps the centralised procedure: The decentralised pillar is eliminated, while keeping the centralised one.
2. The length of country investigations is shortened: It shortens the time limit for country investigations conducted under the centralised procedure and making their findings public (article 6) – in line with the 2014 Parliament's amendments;
3. It removes the option of complete closure of the EU procurement market for a third country (article 8);
4. It adds price adjustment measures: the procuring entity will adjust the price of big tenders (at least €5 million in value, excluding value-added tax (VAT)) with a penalty of up to 20 %. At least 50 % of the tender's value must originate in the third country that has adopted or maintained discriminatory measures. The burden of proof regarding the proportion of non-covered goods is on the foreign bidder (in the 2012 proposal, this obligation rested with the

EU Member States' national contracting authorities in cases of temporary market closure) (articles 8 and 11);

5. It introduces two exemptions:
    - one for European small and medium-sized enterprises (SMEs), and
    - one for goods and services originating in least developed countries subject to GSP+ treatment or the 'Everything but arms' arrangement (provided that more than 50 % of the total value of the tender originates in such a country – Articles 4-5).

Hence, the revised centralised pillar of the IPI consists of the following main steps:

1. Where there is alleged discrimination against EU companies in the procurement market of a third country in an area not falling under the GPA or an FTA, the Commission may initiate an investigation (article 6).
2. When this investigation finds discriminatory restrictions vis-à-vis EU goods, services and/or suppliers, the Commission shall invite the country concerned to consult on the opening of its procurement market (article 7). Such consultations can also take place in the form of negotiations on an international agreement.
3. As a last resort, the Commission can, after consulting with the Member States, propose an implementing act that would impose a price adjustment measure.
    - on tenders from the targeted country;
    - having a total value of at least €5 million (exclusive of VAT);
    - of which at least 50 % is made up of goods and services originating in the targeted country.

Accordingly, a penalty of up to 20 % would be calculated on the price of the tenders concerned, but only to determine the evaluation and ranking of the price component of the tenders. This would eventually need to be applied by the EU Member States' contracting authorities and entities. Potentially, the price adjustment would result in a competitive advantage on EU public procurement markets for EU and non-targeted countries' tenders.

<u>ESF Position on IPI</u>

The European Services Forum welcomed the amended proposal by the European Commission in 2016 and **support the general objective for the setting up of an instrument to support negotiations** on access of EU goods and services **to the public procurement markets of third countries**.

We will not come back here on the difficult and lengthy legislative process of the original proposal of 2012, and of the amended proposal which is **already out for more than five years**. We want to highlight that the world trade has dramatically changed in recent years and is becoming in many instances more protectionist, which makes **action on this file more urgent**. We also note that the political perception in the EU over this file has changed in recent years and **we are encouraged to finally see some convergence between the three institutions**.

We would like to call upon you and the members of the INTA Committee, that has the lead on this file, **to speed up the co-decision process and take any necessary action to ensure that a final decision will be taken with the Council by the end of this year 2021.**

We will not go into the very details of the regulation here. We welcome the fact that the International Procurement Instrument (IPI) confirms the principle of openness of public procurement markets. ESF fully subscribes on the concept that opening up non-EU markets for European companies would lead to public savings, creating a win-win situation for jobs and growth in the EU and in the tender partner countries.

At the same time, we support the aim of the regulation to strengthen the position of the EU when negotiating access for EU businesses to the public procurement markets of non-EU countries and to clarify the legal situation for foreign bidders, goods, and services participating in the EU market.

We consider that one of the main objective of the new instrument should be to ensure that bidders from third countries - which are closed to European bidders, and which are often heavily relying on subsidies from their own government or national authorities - do not distort the EU's public procurement market.

We want to draw the attention on the fact that many countries which are GPA signatories or FTA partners do not always fully apply their obligations. ESF considers that the IPI should be **a tool that catch all countries that do not allow access to their public procurement in a really reciprocal manner**. It therefore should include in its scope as well countries with which the EU has international agreements on public procurement ("covered" goods and services) but do not respect their commitments. European authorities should be able to conduct in-depth investigations on whether European companies are affected by discriminatory measures both in "covered" and "non-covered" areas. Article 1(5) should then be deleted from the proposed Regulation.

ESF supports the fact that the proposed regulation focuses on the role of the Commission to **investigate procurement barriers in third countries**. The new Instrument will allow the Commission to initiate public investigations in cases of alleged discrimination of EU companies in third countries' procurement markets. In case such an investigation would find discriminatory restrictions vis-à-vis EU goods, services and/or suppliers, the Commission will invite the country concerned to consult on the opening of its own national procurement market. Such consultations can also take place in the form of negotiations on an international agreement.

In case the country concerned does not want to conclude such an international agreement, the Commission could, after consultation with EU Member States, apply the new international procurement tool and impose price penalties to their bidders when tendering within the EU. This means that bids consisting of goods and services from companies of the country concerned would, while compared to other bids, be considered as offering a higher price than the one they have put forward, thus providing European and non-targeted countries' goods and services a competitive advantage. To avoid the application of this tool, the concerned countries have only to stop such discriminatory practices and allow EU businesses to participate to their own procurement market. ESF supports this strategy.

ESF welcomes the fact that the Commission's proposal simplifies and shorten the investigation's procedure and reduce the number of actors. However, ESF considers that the IPI 2016 proposal could still be made more efficient. There are **still some provisions** that could generate **undesirable side effects** for many EU businesses and public purchasers, especially by creating considerable new **administrative burden, legal uncertainties** and risks in view of the proposed system of penalties. **The length of the procedure still remains much too long**. Investigation and consultation process could take more than 2 years. It is crucial to further reduce the timing of these processes.

We trust that the INTA Committee members will work closely with the Council experts in the Working Party on Trade Questions to make the process even smoother. European business should not suffer from the process.

It is therefore important that the implementing act proposed by the Commission to activate the disincentive tool will follow **clarified rules**. We understand that it would impose a price adjustment measure on tenders from the targeted country that would have a total value of at least €5 million (exclusive of VAT), and of which at least 50 % is made up of goods and services originating in the targeted country. We approve the amendment in which, while in the original proposal contracting authorities bore the **burden of proof, it is now borne by the bidder**, who has to demonstrate that less than 50 % of the total value of its tender is made of goods and services originating in the third country concerned.

Accordingly, a penalty of up to 20 % would be calculated on the price of the tenders concerned, but only to determine the evaluation and ranking of the price component of the tenders. This would eventually need to be applied by the EU Member States' contracting authorities and entities. ESF welcomes the simplification of the administrative burden in this respect for all actors. Potentially, the price adjustment would result in a competitive advantage on EU public procurement markets for EU and non-targeted countries' tenders, and hence a **disadvantage for the bidders from closed countries**.

ESF takes note of the exclusion of the most vulnerable developing countries from the scope of the instrument. Indeed very few operators, in particular related to provision of services, from these countries participate to EU tenders. And more importantly, it thus put the pressure on major trading partners to further open up their procurement markets to EU operators. Similarly, we support the fact that the price adjustment measure of regulation will **not apply to tenders submitted by European SMEs**, which would have been discouraged by the induced administrative burden.

PUBLIC DATA FROM THE GPA REPORT

(EU Total figures include contract by EU 28 Member States and by the EU institutions)

Year	Contracting Authority	Supplies	Works	Services	Total
2016	**Contracts covered by GPA**				
	Annex 1	33,079,169,691	27,962,843,769	21,631,187,961	82,673,201,421
	Annex 2	80,779,093,490	103,263,558,330	67,766,354,463	251,809,006,283
	Annex 3	19,301,579,536	28,961,049,415	19,859,712,581	68,122,341,532
	Total contracts covered by GPA	133,159,842,716	160,187,451,515	109,257,255,005	402,604,549,236
	Entities not covered by GPA				
	Annex 1	300,573,869	262,138,866	12,724,385,023	13,287,097,758
	Annex 2	290,809,252	1,159,811,346	239,405,547	1,690,026,145
	Annex 3	3,277,432,972	4,099,926,004	4,339,187,197	11,716,546,172
	Total entities not covered by GPA	3,868,816,093	5,521,876,216	17,302,977,766	26,693,670,076
	Contracts not covered by GPA				
	Annex 1	2,067,376,309	5,825,000	25,716,323,344	27,789,524,653
	Annex 2			47,047,702,426	47,047,702,426
	Annex 3	772,178,018	10,214,598	7,975,827,390	8,758,220,006
	Total contracts not covered by GPA	2,839,554,327	16,039,598	80,739,853,159	83,595,447,085
	* Total above threshold	140,135,412,427	165,733,401,968	207,024,852,001	512,893,666,396

Split of sectors: "works": ; "Goods": and "Services" :

CPV Nr.	CPV Name (Common public Procurement Vocabulary)
45	Construction works (*including construction services – CPC 51 – see next page*) !!!
71	Architectural, construction, engineering and inspection services
34	Transport equipment and auxiliary products to transportation
90	Sewage, refuse, cleaning and environmental services
79	Business services: law, marketing, consulting, recruitment, printing and security
33	Medical equipments, pharmaceuticals and personal care products
72	IT services: consulting, software development, Internet and support
30	Office and computing machinery, equipment and supplies except furniture and software packages
9	Petroleum products, fuel, electricity and other sources of energy
38	Laboratory, optical and precision equipments (excl. glasses)
42	Industrial machinery
39	Furniture (incl. office furniture), furnishings, domestic appliances (excl. lighting) and cleaning products
44	Construction structures and materials; auxiliary products to construction (except electric apparatus)
60	Transport services (excl. Waste transport)
48	Software package and information systems
32	Radio, television, communication, telecommunication and related equipment
31	Electrical machinery, apparatus, equipment and consumables; lighting
50	Repair and maintenance services
75	Administration, defence and social security services
73	Research and development services and related consultancy services
85	Health and social work services
64	Postal and telecommunications services
77	Agricultural, forestry, horticultural, aquacultural and apicultural services
98	Other community, social and personal services
22	Printed matter and related products
66	Financial and insurance services
18	Clothing, footwear, luggage articles and accessories
80	Education and training services
65	Public utilities
15	Food, beverages, tobacco and related products
55	Hotel, restaurant and retail trade services
24	Chemical products
35	Security, fire-fighting, police and defence equipment
43	Machinery for mining, quarrying, construction equipment
51	Installation services (except software)
92	Recreational, cultural and sporting services
63	Supporting and auxiliary transport services; travel agencies services
70	Real estate services
16	Agricultural machinery
14	Mining, basic metals and related products
3	Agricultural, farming, fishing, forestry and related products
37	Musical instruments, sport goods, games, toys, handicraft, art materials and accessories
19	Leather and textile fabrics, plastic and rubber materials
76	Services related to the oil and gas industry
41	Collected and purified water

LIST OF DIVISION 51, CPC PROV.

Group	Class	Subclass	Title	Corresponding ISCI
SECTION 5			CONSTRUCTION WORK AND CONSTRUCTIONS: LAND	
DIVISION 51			CONSTRUCTION WORK	
511			Pre-erection work at construction sites	
	5111	51110	Site investigation work	4510
	5112	51120	Demolition work	4510
	5113	51130	Site formation and clearance work	4510
	5114	51140	Excavating and earthmoving work	4510
	5115	51150	Site preparation work for mining	4510
	5116	51160	Scaffolding work	4520
512			Construction work for buildings	
	5121	51210	For one- and two-dwelling buildings	4520
	5122	51220	For multi-dwelling buildings	4520
	5123	51230	For warehouses and industrial buildings	4520
	5124	51240	For commercial buildings	4520
	5125	51250	For public entertainment buildings	4520
	5126	51260	For hotel, restaurant and similar buildings	4520
	5127	51270	For educational buildings	4520
	5128	51280	For health buildings	4520
	5129	51290	For other buildings	4520
513			Construction work for civil engineering	
	5131	51310	For highways (except elevated highways), street, roads, railways and airfield runways	4520
	5132	51320	For bridges, elevated highways, tunnels and subways	4520
	5133	51330	For waterways, harbours, dams and other water works	4520
	5134	51340	For long distance pipelines, communication and power lines (cables)	4520
	5135	51350	For local pipelines and cables; ancillary works	4520
	5136	51360	For constructions for mining and manufacturing	4520
	5137		For constructions for sport and recreation	
		51371	For stadia and sports grounds	4520
		51372	For other sport and recreation installations (e.g. swimming pools, tennis courts, golf courses)	4520
	5139	51390	For engineering works n.e.c.	4520
514	5140	51400	Assembly and erection of prefabricated constructions	4520
515			Special trade construction work	
	5151	51510	Foundation work, including pile driving	4520
	5152	51520	Water well drilling	4520
	5153	51530	Roofing and water proofing	4520
	5154	51540	Concrete work	4520
	5155	51550	Steel bending and erection (including welding)	4520
	5156	51560	Masonry work	4520
	5159	51590	Other special trade construction work	4520
516			Installation work	
	5161	51610	Heating, ventilation and air conditioning work	4530
	5162	51620	Water plumbing and drain laying work	4530
	5163	51630	Gas fitting construction work	4530
	5164		Electrical work	
		51641	Electrical wiring and fitting work	4530
		51642	Fire alarm construction work	4530
		51643	Burglar alarm system construction work	4530
		51644	Residential antenna construction work	4530
		51649	Other electrical construction work	4530
	5165	51650	Insulation work (electrical wiring, water,heat, sound)	4530
	5166	51660	Fencing and railing construction work	4530
	5169		Other installation work	
		51691	Lift and escalator construction work	4530
		51699	Other installation work n.e.c.	4530
517			Building completion and finishing work	
	5171	51710	Glazing work and window glass installation work	4540
	5172	51720	Plastering work	4540
	5173	51730	Painting work	4540
	5174	51740	Floor and wall tiling work	4540
	5175	51750	Other floor laying, wall covering and wall papering work	4540
	5176	51760	Wood and metal joinery and carpentry work	4540
	5177	51770	Interior fitting decoration work	4540
	5178	51780	Ornamentation fitting work	4540
	5179	51790	Other building completion and finishing work	4540
518	5180	51800	Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator	4550