POSITION PAPER

Brussels, 3 July 2020

Orgalim Position Paper on the International Procurement Instrument (IPI)

1. Introduction

The European procurement market is generally open to bidders, goods, and services from third countries. The EU is advocating for the opening up of public procurement markets in third countries, both at the plurilateral level through a revised Agreement on Government Procurement (GPA)[1], and in its bilateral trade negotiations, to grant European companies equivalent market access in non-EU countries.

In this context, the European Commission proposed a Regulation on an International Procurement Instrument (IPI) in 2012[2], and then revised the proposal in 2016[3]. Under the proposal, the IPI can empower the Commission to conduct investigations aimed at determining whether third countries are closing off their public procurement markets to EU companies. If this were the case, the Commission would start negotiations with the country concerned. However, if such negotiations do not result in a successful conclusion, bids in which more than 50% of the total value is created by goods and services originating in the country concerned could face sanctions in terms of price supplements.

As the Council is currently discussing the proposal, Orgalim would like to put forward its support in principle as well as its specific views on the IPI.

2. International Procurement Instrument – key to open up foreign markets

Orgalim advocates for open and rules-based trade, and we are worried by the increasingly protectionist policies which some third countries have adopted, as access to public procurement is key for our companies. Companies from third countries should enjoy guaranteed EU market access to public procurement only if a binding international agreement or free trade agreement exists between the EU and the country of the foreign bidders, mutually granting free, equal, transparent, and non-discriminatory market access. In particular, to promote the principle of reciprocity and to give the EU leverage in negotiations with foreign countries on the opening-up of their procurement markets to EU companies, Orgalim supports the ambition of the IPI. We believe that this will allow the EU to be more proactive in promoting open and rules-based trade and a global level playing field.

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[1] https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm
[2] COM(2012) 124 final
[3] COM(2016) 34 final

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At the same time, it has to be ensured that the instrument can be applied – from a practical perspective – by the procuring authorities. This means that the IPI should not create complex rules that would subsequently prove impossible to apply. In particular, the local content provision for goods that are foreseen in the proposal[4] could lead to complex investigations, which could cause bureaucratic burdens and legal uncertainty. Furthermore, it is essential that the concrete meaning of "50% of the total value [...] of goods [...] originating in the third country concerned" is specified.

Moreover, the IPI needs to be balanced, non-protectionist, and compatible with the Agreement on Government Procurement (GPA). This is essential in order not to elicit retaliatory actions detrimental to European interest. It should also include provisions on State-Owned Enterprises, and, in the event that there is no agreement in place with the third country, the exclusion of State-Owned Enterprise bidders from the tender should be possible.

Finally, the primary purpose of the IPI is to encourage third countries to reciprocate, opening their public procurement markets to EU companies. The current EU proposal foresees a price penalty "of up to 20%"[5] to be added to the price of the tenders concerned. Looking at the current developments in both the EU and foreign countries' public procurements markets, we believe that this 20% price adjustment measure should be further increased.

Orgalim supports the ambition of the IPI and calls for a swift adoption of this Regulation, taking into account the aforementioned observations.

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[4] The local content provisions of goods are laid down in Article 8 (1) of the 2016 proposal.

[5] The price increase of up to 20% is foreseen by Article 8 (2) of the 2016 proposal.