

International Procurement Instrument

**Proposal with the objective of creating a level playing field
for EU operators in the global procurement market**

**Economic Policy Department
Ministry for Finance and Financial Services**

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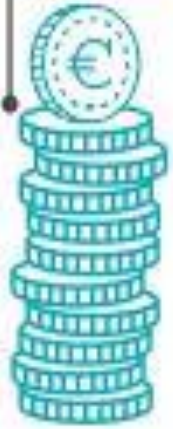
A PROPOSAL BY THE EUROPEAN COMMISSION

- Objective of the proposal is to address barriers for EU firms in the public procurement markets of 3rd countries
- The EUROPEAN COUNCIL and the EUROPEAN PARLIAMENT recognize a lack of level playing field for Union firms in International Public Procurement
- At times non-EU economies discriminate against Union bidders by limiting access to their Public Procurement to EU firms
- The Union market is relatively more open – proposal seeks balance, equal treatment
- Commission proposal to address this imbalance – 1st proposal in 2012 and revised in 2016

WHAT MIGHT A BARRIER LOOK LIKE (SOURCE: OECD)

- OECD taxonomy of trade barriers: EXPLICIT or IMPLICIT discrimination
- MARKET ACCESS RESTRICTIONS – explicit restrictions e.g. certain sectors kept closed, e.g. bidding open only to local firms
- DOMESTIC PRICE PREFERENCES – explicit – e.g. $x\%$ preference for local bids
- LOCAL CONTENT REQUIREMENTS – explicit – e.g. must have $> y\%$ local content
- CRITERIA IN THE PROCUREMENT – implicit – e.g. spurious / artificial criteria, overt or manifest difficulty for outside firms
- TRANSPARENCY AND INFORMATION – implicit – e.g. scant or late publication of information

THE NUMBERS, AND THE PROSPECT



€2.4 TRILLION

EU procurement market - open to bidders from all around the world



€8 TRILLION

worldwide procurement market - more than half is closed to European companies



€10 BILLION

EU companies win only a tiny bit of the world's procurement market per year

WHILE THE EU PROCUREMENT MARKET IS ACCESSIBLE TO FOREIGN FIRMS



CHINA



Road bridge construction in Croatia

€ 345,000,000



Construction work for water projects in Poland

€ 53,000,000



TURKEY



Gas pipelines in Romania

€ 127,000,000



NORWAY



High-voltage cable in Greece

€ 111,000,000



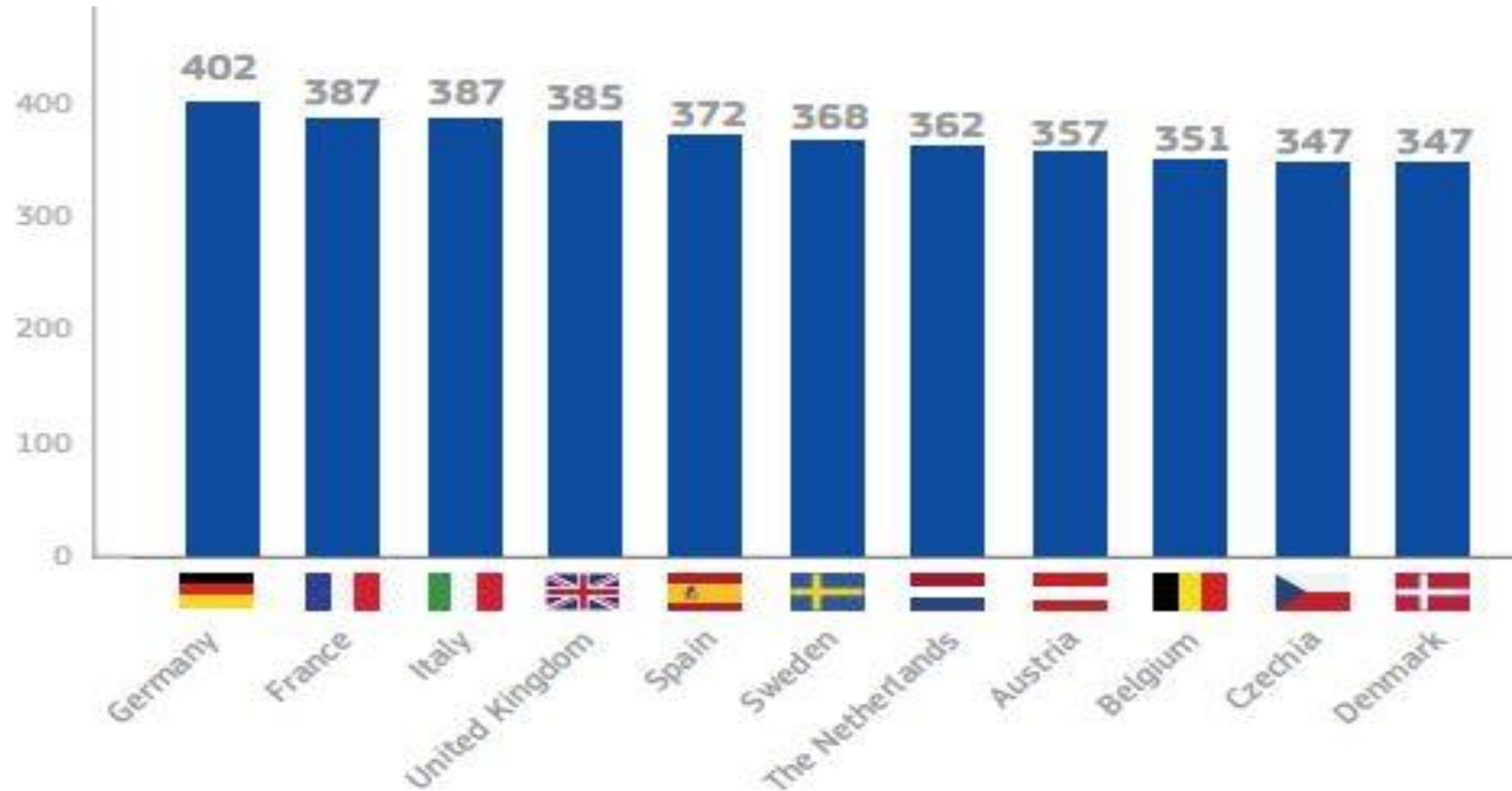
SWITZERLAND



Railway and tramway locomotives and rolling stock in Italy

€ 115,000,000

EU MEMBER STATES ARE AMONG THE MOST IMPACTED BY TRADE DISCRIMINATION IN PUBLIC PROCUREMENT



Number of discriminatory measures affecting EU Member States in the access to public procurement markets of non-EU countries

SOURCE: GTA database 2017

THE PROPOSAL



- Since public procurement by EU governments is very open, the proposal seeks reciprocity, balance
- To establish a level-playing field between EU and non-EU firms, the proposal creates a **LEVER**
- The proposal applies to Goods and Services bought by the State and it applies to Public Concessions
- It does not apply to public procurement sectors covered by an agreement with third countries, i.e. Free Trade Agreement or the Government Procurement Agreement of the WTO – for these, dispute settlement applies

THE PROPOSAL

- Commission proposal applies to contracts with **values above €5 million** for goods, services and concessions
- there are **80+** 3rd countries in all, close and far, mid-sided, and huge economies; the **LEVERAGE** is significant
- **RECIPROCITY? HOW?**
 - the European Commission will seek to engage with non-EU Governments when trade discrimination is detected

THE MECHANISM



- Engage, negotiate, persuade
- TWO (2) possible outcomes:
 - **POSITIVE OUTCOME:** the trade discrimination is removed, market space opens up to EU bidders
 - **NEGATIVE OUTCOME:** little or no progress, or initial correction and back to problems later
- The last resort: the EU may impose a Price Adjustment Mechanism (PAM), a “markup” on bids from the offending country for adjudication purposes
- A PAM \leq 20% at the adjudication phase

THE PAM & ITS EFFECT

- PAM applies only during adjudication of bids by EU Government procurers from targeted countries (MS / EU interest)
- A bid from a discriminating country e.g. with an 8% “markup” or a 12% “markup” may lose the bid, giving a price advantage to other bidders (EU or not)
- PAM may lead to a more expensive procurement because of exclusion of the cheapest bidder e.g. the second bid wins
- The bid with “markup” (PAM) may still win: **AND** the price actually paid will **not** contain the “markup”



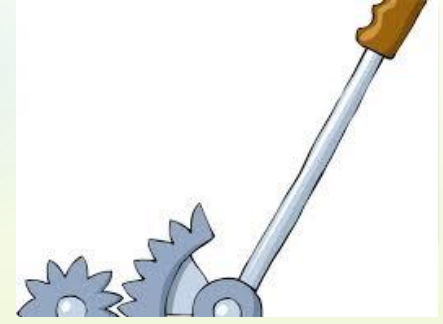
THE MECHANISM IS MORE TARGETED THAN THAT

- Another calibration of a proposed measure is: the Commission may in fact target specific regions or provinces of an offending country
- for a large country, an offending country, measures may be in place against e.g. part or all of a large economy, several but not all provinces / regions
- a region or a province with population 10 million or 30 million may be under measures, but not all the offending country
- Further, it only applies for bids with > 50% in value of content originating in targeted country / ies
- Such targeting seeks maximum effect with minimum discomfort within the EU

EXCLUSIONS / EXCEPTIONS TO PAM APPLICATION

- Tenders with more than 50% in value (goods and services) from LDCs and vulnerable developing countries
- Tenders submitted by SMEs established in the Union and engaging in substantive operations with a direct and effective link with the economy of at least 1 MS
- Where Union providers cannot meet the demand for specifications indicated by the contracting authority / entity
- Where application would lead to disproportionate increase in price / costs of contract

WHAT SHOULD SUCCESS LOOK LIKE



- **An international agreement between an offending non-EU state and the EU: reciprocity restored, market space recuperated for EU firms / bids**
- **An instrument that is not used for protectionism**
- **An instrument that is not burdensome on operators and contracting authorities**
- **More EU successful bidding, more procurement export for EU bidders**



QUESTIONS – THE FLOOR TO ALL

- ▶ What is the expected impact of the IPI on the domestic procurement market?
- ▶ To avoid PAM, <50% of content has to originate from countries that are not targeted by the regulation.
 - ▶ To what extent are Maltese companies bidding for government procurement dependent on third country suppliers?
 - ▶ Are Maltese bidders and their products well placed to avoid the PAM procedure?
- ▶ Does the proposal add value for Maltese companies wanting to access procurement markets in third countries?
- ▶ Do Maltese companies access procurement markets abroad?
 - ▶ Is there a difference in interest between EU & Third Countries?
 - ▶ Do Maltese companies find problems to access these markets?
- ▶ Which are the most interesting procurement markets by country / region for Maltese businesses?



THANK YOU!