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WORKING DOCUMENT

From:	FI Delegation
To:	Working Party on Trade Questions
Subject:	International Procurement Instrument - FI comments

IPI, International Procurement Instrument; Comments by Finland

We thank the Presidency for the proposals for the additional elements of the IPI Regulation (WK 3877/2021 INIT), as well as for the informal draft text for recitals (WK 4042/2021 INIT). Our comments on the IPI in general and on the proposals are as follows:

In general, the Regulation should fulfill several criteria. The administrative burden for contracting authorities and EU companies, as well as legal uncertainty should be minimized. We are in favour of procedures and provisions that are as simple and clear as possible. Uniform application of the Regulation in the EU is also very important. We fully support the Presidency to align the text with relevant EU procurement Directives.

The Regulation should concentrate on significant procurement to reduce administrative burden. Therefore, we support higher thresholds across the board.

As far as IPI measures are concerned, we have preferred the exclusion instead of the adjustment measure, because it is easier and simpler to apply. As a compromise solution, we are ready to accept the both measures.

As to legal uncertainty, we draw attention to Article 8 – review procedures. There we have serious concerns about the ineffectiveness penalty. The penalties and procedures relating to the IPI should be in line with the Remedies Directives.

The so-called add-on, Article 6 restricts the procurement of goods and services originating from the targeted third country. If the successful tenderer has provided 100 % of the contract value originating from the targeted country, it has to modify its bid, which can be against Article 72 of the procurement Directive (2014/24/EU). It seems to us that the contracting entity cannot accept this modification without a new competition and that the provision is inconsistent with the Directive. How do you see the relationship between these provisions (Article 72 of the Directive and Article 6 of the IPI)?

WK 3877/2021 INIT – Additional elements

Finland supports the new recital on the treatment of Least Developed Countries (LDCs).

As to Small and Medium Enterprises (SME), we can accept the new paragraph of Article 6, although it would add administrative burden for the contracting authorities and would make the Regulation more complicated. It is important to try to find means how to facilitate the work of contracting authorities in assessing the status of SME tenderers in respect of this provision.

As a compromise, we can accept the idea that a Member State or some Member States can request to exempt sub-national contracting authorities or entities from the application of the IPI Regulation provided that this exemption would level out the burden caused by IPI measures among the EU Member States. It is important that the exemption is limited in time and in scope.

It is proposed that IPI measures should also apply to contracts awarded based on framework agreements and to specific contracts awarded under dynamic purchasing systems. We have doubts about the double application of an IPI measure, both in the first phase of the framework agreement and in the second phase when contracts are awarded. What would be the additional value for this?

Moreover, it is proposed that IPI measures would apply to individual contracts equal or above the thresholds of the EU procurement Directives. We do not see the rationale for treating contracts awarded under framework agreements more severely than other contracts. This provision would lessen the interest in using framework agreements or dynamic purchasing systems and would make separate competitive tendering more tempting. We propose the following:

(...) Article 5 (adding to paragraph 3)

(...) If the IPI measure is not applied at an earlier phase, the IPI measure shall apply to framework agreements and dynamic purchasing systems when reopening the competition to contracts awarded based on a framework agreement and to specific contracts awarded under a dynamic purchasing system of an estimated value equal to or above EUR 10.000.000 exclusive of value added tax for works and equal to or above EUR 5.000.000 for goods and services.

WK 4042/2021 INIT - Recitals

As discussed at the previous meeting of the Working Party on Trade Questions, the recitals of the Regulation should be assessed and dealt with in parallel with the draft Articles. Therefore, we reserve the right to express further comments on the recitals at a later stage.