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WORKING DOCUMENT

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

Wrap-up of Latvian comments during the discussions on the International Procurement Instrument (IPI) in the Working Party of Trade Questions – March 2021

Latvia stresses the importance, that the forthcoming instrument should be a market-opening and not protectionist one. Therefore, we believe that the IPI measures should be proportionate and assessed on case by case basis. It is of the utmost importance that the instrument **does not have major effect on the procurement processes within the EU, does not reduce competition and does not increase the costs for public authorities.**

A possible negative reaction from our trading partners has to be considered. Latvia believes that sufficient time for consultations and policy change in the third country is necessary. Therefore, we think that the proposed time of nine months for consultation and investigation in Article 4 is quite narrow and should not be reduced further.

The **IPI measures must be proportionate and for a limited period of time.** The exclusion of bids from third countries should be used as exceptions in extreme cases with clear criteria of its selection, while the score adjustment mechanism needs to be carefully understood – therefore we look forward to the compromise proposal to assess its applicability. Latvia believes that the IPI measures have to be regularly reviewed every 3-5 years, like with the trade defence instruments, in order to give an incentive to third country to engage in negotiations.

It is the right way forward to diversify thresholds between the works and goods and services but we would like to see further discussion on the level of thresholds set in Article 5. In order to do so it is important to see data from the Commission on the impact – on how many agreements and their value will the IPI measures apply. Moreover, how the IPI measures will impact different types of procurement agreements (works, concessions, goods, services)? Also, in a view of the negative list of contracting authorities it is needed to understand the methodology and source of data for calculation of each Member State's leverage.

Regarding the new proposal to set different thresholds for the contracts awarded based on Framework Agreements and specific contracts awarded under Dynamic Purchasing Systems (Article 5 (3)), we are concerned that this will not only create additional administrative burden for contracting authorities but will also extend and reinforce the scope of the application of IPI measures, since the measures would be applied twice – firstly, when concluding the Framework Agreement or Dynamic Purchasing Systems and secondly, when concluding the contracts within their framework.

For Latvia it is **vital that the Regulation is not creating unnecessary administrative burden** for the contracting authorities and the European businesses, especially SMEs. **Latvia looks cautiously on additional contractual obligations upon the successful tenderer (add-on)**, especially on the rules that oblige contracting authorities to assess the origin of goods, services or works. We find this will create excessive administrative burden and will cause legal uncertainty. Furthermore, we have concerns that the condition currently being offered in Article 6 for exemption of SMEs from the add-on could create a higher administrative burden for the contracting authorities (and the businesses themselves) than the overall benefit of such a norm. We find that the contracting authorities will need to assess if the SME is autonomous, its origin and also make sure that the goods supplied were actually produced by the SME itself. Given that the Regulation would apply to the origin of an economic operator, it would be better to lay down only general rules for subcontracting by setting a threshold for how much of the contract value could be subcontracted to the economic operator from the third country in question (retaining only Article 6 (1a), since it would be easier and clearer to administrate.

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To further reduce administrative burden, Latvia believes that the Regulation should oblige the Commission to publish the IPI decisions in one place on its website (in parallel to Official Journal) – a publicly available database where the contracting authorities could easily find the third countries, sectors and the measures which they need to apply.

In addition, a guideline to determine the origin of economic operators that would help contracting authorities is needed. It should include criteria to assess the origin and possible evidences that would support it. We find that such guideline would improve the transparency and help also the European businesses to participate in government procurements.

Latvia reserves the right to submit further comments at a later stage.