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WORKING DOCUMENT

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

**Comments and proposals of Poland to the WPTQ
on draft International Procurement Instrument (IPI) Regulation provisions**

General position:

Poland reaffirms its support for the adoption of balanced instruments of the draft EU regulation aimed at opening third-countries public procurement markets to EU economic operators, goods and services, by exerting pressure on third-country authorities through limiting access to the EU procurement market for economic operators, goods and services originating in those third countries, if necessary. We support the efforts to ensure effective reciprocity in access to international public procurement.

The EU Member States differ in terms of size of their national public procurement markets, of degree and direction of penetration of these markets by third country economic operators, goods and services, as well as of the structure of public contracts they award and of the procurement tools used. As a result, the same IPI measure may have an extremely different impact in terms of its burden to contracting authorities in different Member States of the European Union.

Therefore we believe that the provisions of the International Procurement Regulation (IPI) should allow for right balancing the interests of the EU and EU Member States, while being as user-friendly as possible for EU contracting authorities through their simplicity, transparency and flexibility, and should be non-discriminatory for economic operators operating in the EU, especially for EU small and medium-sized enterprises. The effective implementation of IPI instruments requires the participation of the EU contracting authorities and contracting entities and their role and effort should be taken into account.

For these reasons we present below the following comments and suggestions to the current proposed provisions of International Procurement Instrument regulation (IPI):

Main comments and suggestions:

Poland is in favor of maintaining a wide range of available instruments of the IPI Regulation in order to allow the international procurement implementing act to be adapted to the restrictive measures applied by third countries. We support possibility **to exclude an economic operator** from a country targeted by IPI measure or to apply to its offer a **price adjustment measure** (PAM) or a **score adjustment measure** (SAM) set as the proposed percentage range between **20-40%** of the value/score of the offer, together with **contractual clause "add-on"**, to prevent the aim of IPI measures being circumvented by the use of "letter-box companies".

On the other hand, we consider unnecessary the proposal to establish, already in the IPI regulation, very high **thresholds** for the application of the international procurement implementing acts, higher than those applied in the classic procurement directive, sectoral procurement directive, the directive on concessions and in the WTO Government Procurement Agreement, since the thresholds are to be defined anyway in the implementing acts to the IPI regulation (Article 5 paragraph 3).

We believe that consortia and subcontractors should not be excluded from the scope of the IPI Regulation. In case of **consortia** we do not support establishing of the **de minimis threshold** below of which participation of entities from countries addressed in the implementing acts on international procurement would be allowed, because determining shares in a consortium of its members may be very **burdensome** for contracting authorities and contracting entities. Providing for such a threshold in the IPI Regulation will result in the obligation of contracting authorities and contracting entities

to demand from consortia applying for a contract detailed cost estimates of their offers and to analyze these estimates, also in case of lump sum contracts. If this *de minimis* threshold is adopted, it will be necessary to adopt also in the IPI Regulation or in international procurement implementing acts more provisions relating to this, such as establishing an obligation to request from consortia to provide detailed cost estimates specifying the participation of economic operators in the consortium. It will be also necessary to complement the definition of "evidence" with appropriate means of proof, as cost estimates/priced budgets of offers, indicating shares of members in the consortium. If the *de minimis* participation in consortium threshold is adopted in the Regulation, we propose **to allow contracting authorities and contracting entities to decide** whether in a particular procurement or concession procedure the *de minimis* participation in a consortium of economic operators from third countries addressed in international procurement implementing acts is allowed or excluded. Information thereof should be announced in appropriate contract notice, accordingly of procurement, concession, framework agreement or dynamic purchasing system (Article 3 paragraph 4).

If a *de minimis* threshold for **purchases under framework agreements and dynamic purchasing systems** is adopted, we propose to apply this threshold to aggregated such purchases from one economic operator in a given financial year or throughout the duration of these procurement tools. An appropriate "add-on" clause would have to be applied to **aggregated purchases from a single economic operator** when a relevant threshold is exceeded **in a given financial year or over the duration of these procurement tools**. In the event that the value of the aggregated purchases for one economic operator would exceed a *de minimis* threshold, that economic operator, intending to continue to participate in the framework agreement or dynamic purchasing system, should prove that value of goods or services provided for so far have not exceeded 50% of the value of relevant threshold, or that it can be reasonably expected that it will not be exceeded in the set period. The application of this provisions will require the use of a specific "add-on" clause dedicated to framework contracts and dynamic purchasing systems. Economic operators participating in a framework agreement or in a dynamic purchasing system, where they anticipate that the value of the goods or services supplied may exceed this threshold, should ensure the appropriate origin of the supplies delivered or services provided, or suspend their participation in framework agreement or dynamic purchasing system for remaining period (a given financial year or the duration of these procurement tools). Otherwise the penalty of the "add-on" clause would apply (Article 5 paragraph 3).

We believe that the references to the treatment of autonomous **SMEs** as well as to offers from **LDCs** and its content can be included in the recitals of the regulation. Possible provisions on instruments supporting SMEs in applying the provisions of this Regulation could be included in the new Article 7(1) "Facilitating tools/Implementation tools", proposed in the Annex to this document.

We support exception from application of implementing acts on international procurement and as a result the "add-on" clause, in situations where this would lead to a **disproportionate increase in the price or cost of the contract**, above the mount allocated to the procurement (Article 7 paragraph 1 point c).

We support the proposal that contracts awarded under **non-competitive procurement procedures** (single tenderer procurement) **should also be excluded** from the application of IPI measures and this exclusion should be included in the current Article 7 of the draft IPI "Exceptions", by general reference to the provisions of Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU (Proposal for Article 7 paragraph 1 new subsequent point) providing grounds for application of such procedures.

Instead of obligation of contracting authorities or contracting entities to **notify the Commission** of application by them of exception under present Article 7, we propose that contracting authorities should rather be obliged to **submit** such **information to TED**, where it would be accessible to the Commission as well as to interested economic operators. Need for changes of relevant forms of notices to TED: on a contract or concession, amending the notice on a contract or concession, in the notice on awarded contracts or concessions, would have to be considered. In case it was not accepted, we suggest that a notification to the Commission of the application of exemptions should be done by means of an on-line form, to be adopted by the Commission in an implementing act in the comitology advisory procedure (Article 7 paragraph 2 and 3).

Instruments of the IPI Regulation are designed to support the Commission in negotiations with third countries on extending mutual access to procurement markets. Therefore we consider an expectation legitimate that the Commission services will provide contracting authorities and contracting entities with adequate support in the correct application of IPI provisions. Therefore, we propose to oblige the Commission to prepare **on-line instruments** providing EU contracting authorities and contracting entities with access to information about applicable implementing acts on international procurement and their scope, and allowing also to determine whether the contract awarded will be subject to the IPI implementing acts (e.g. by entering into dedicated electronic form of essential procurement data, such as the CPV number of the goods or services procured and a value of the procurement and other data that describing a scope of IPI implementing acts). The Commission should also provide, where necessary, up-to-date **guidelines** for contracting authorities and contracting entities on important aspects relating to application of the Regulation, such as: on the content and use of "add-on" contractual clauses, on the correct identification of the origin of economic operators and the goods and services procured. The Commission should also specify the documents that contracting authorities and contracting entities may request from economic operators confirming fulfillment of requirements of the IPI Regulation and implementing acts on international procurement adopted on its basis and the methods of their evaluation (Proposal for new Article 7(1) "Implementation tools" or "Facilitating tools").

We do not support an application to contracting authorities and contracting entities of severe sanctions for individual cases of breaches by EU contracting authorities of obligations under the regulation and implementing acts. We are of the position that **ineffectiveness** of contracts concluded in breach of the IPI provisions or implementing acts issued on their basis may only apply to the most serious or repeated infringements. We propose to include an indication in a recital to the IPI that possible penalties will be imposed on EU contracting authorities and contracting entities only in the event of major or repeated infringements.

General remarks on the wording of the regulation (Article 1 and Article 2):

We propose to harmonize the terminology of the provisions of the IPI Regulation with that used in EU directives on public procurement by relying on the definitions set out in these directives 2014/24/EU, 2014/25/EU and 2014/23/EU (regarding e.g. the definition of "economic operator" which is included in these directives). We also propose to use the full term "European Union" instead of "Union" and single term for "IPI measures", either "implementing acts on international procurement" or "international procurement implementing acts". Besides we are also opposed to assigning specific narrow meanings to commonly used terms, such as "a good or goods", "third country measure or practice". Instead, we propose, for example, to add a distinctive qualification to these terms (e.g. "third country **discriminatory** (or *restrictive*) measure or practice", "an **addressed** (or *targeted*) good or goods"), using a distinguishing name or, in the case of the definition of "a good

or goods", to possibly transfer it to an article that it concerns the most (Article 6) and limit its scope of application to circumstances related that Article.

Detailed proposed changes to the provisions of the draft IPI Regulation are presented in track changes mode in the annexed draft text of IPI Regulation.

Annex 1 Draft provisions of International Procurement Instrument Regulation with detailed proposals of changes proposed by PL

Chapter I GENERAL PROVISIONS

Article 1

Subject matter and scope of application

1. This Regulation establishes measures intended to improve the access of economic operators, goods and services from the European Union to the public procurement and concessions markets of third countries **in respect of non-covered procurement**. It lays down procedures for the Commission to undertake investigations into alleged **third country discriminatory procurement** measures or practices ~~adopted or maintained by third countries~~ affecting economic operators, goods and services from the European Union, and to enter into consultations with the third countries concerned regarding maintained such discriminatory measures or practices. **This Regulation also** ~~It~~ provides for legal grounds **for the Commission to adopt implementing acts on international procurement restricting the access of economic operators, goods or services from third countries to public procurement contracts when consultation with third country will not result in withdrawing discriminatory measures or practices on procurement or concession market of the third country or in other satisfactory solutions.** ~~of excluding certain tenders or imposing price adjustment measures to certain tenders for contracts, on the basis of the origin of the economic operators, goods or services concerned.~~

2. This Regulation shall apply to the award of contracts for works, goods or services and ~~the award of~~ works and services concessions covered by the following acts:

(a) Directive 2014/23/EU

(b) Directive 2014/24/EU

(c) Directive 2014/25/EU

3. The application of this Regulation shall be without prejudice to any international obligations of the European Union or measures that Member States and their contracting authorities and contracting entities may take in accordance with the acts mentioned in paragraph 2.

4. This Regulation shall apply only to procurement and concession award procedures launched after its entry into force. A reference to the application of this Regulation shall be included by contracting authorities and contracting entities in the documents of procurement or concession award procedures falling within the scope of an implementing act on international procurement.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions shall apply.

(1) 'economic operator' means economic operator as defined in Directives 2014/23/EU, 2014/24/EU and 2014/25/EU;

(2) 'an addressed good or goods' means a good or goods referred to in the object of the procurement tender and in accordance with the specifications of the contract. It does not refer to any input, material or ingredient incorporated in a good or in goods supplied.

(3) 'supporting evidence' means any information, certificate, supporting document, statement and other means of proof aimed at proving compliance with the obligations set out in Art. 6.1.(c). This may refer to:

a) certificates of origin, supplier declarations or import declarations for addressed goods originating in third countries;

b) description of manufacturing processes (including samples, descriptions or photographs) for addressed goods to be supplied; and

c) extract of relevant registers or of financial statements for the origin of services, including a VAT identification number;

d) in case of a tender filed by the consortium, cost estimates/priced budgets indicating that participation of persons or entities originating from third country whose economic operators and goods or services are subject to the IPI measure amounts to less than 10% of the value of the submitted tender”;

(4 2) 'contracting authority' means contracting authority as defined in Directives 2014/23/EU, 2014/24/EU and 2014/25/EU;

(5-3) 'contracting entity' means contracting entity as defined in Directives 2014/23/EU and 2014/25/EU;

(6 4) 'third country discriminatory measure or practice' means any legislative, regulatory or administrative measure, procedure or practice, or combination thereof, adopted or maintained by public authorities or individual contracting authorities or contracting entities in a third country, that result in a serious and recurrent impairment of access of the European Union goods, services and/or economic operators to the public procurement or concession markets of that country;

(7-5) 'implementing act on international procurement' means an measure adopted by the Commission in accordance with this Regulation limiting the access of economic operators and/or addressed goods and services originating in the third country to the European Union public procurement or concessions market in the area of non-covered procurement goods and services;

(8-6) 'non-covered goods or services procurement' means procurement of goods or services or concessions originating in a third country with regarding which the European Union has not concluded an international agreement in the field of public procurement or concessions including market access commitments with the third country concerned, as well as procurement of goods, or services, or concessions originating in a third country with which the European Union has concluded such an agreement but in respect of which the agreement does not apply;

(9-7) 'contract' means public contracts as defined in Directive 2014/24/EU, concessions as defined in Directive 2014/23/EU and supply, works and service contracts as defined in Directive 2014/25/EU;

(10-8) 'tenderer' means an economic operator that has submitted a tender;

(11-9) 'country' means any state or separate customs territory, without having implications for sovereignty.

(12) 'subcontract' means to execute part of a contract awarded to the contractor. The simple delivery of goods or parts necessary for the execution of a service is not considered to be subcontracting.

2. For the purposes of this Regulation, except for Article 85(3), the execution of works and/or a work within the meaning of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU shall be considered as the provision of a service.

Article 3

Determination of origin

~~1. The origin of a good shall be determined in accordance with Article 59 to 62 of Council Regulation (EEC) No 952/2013.~~

~~2. The origin of a service shall be determined on the basis of the origin of economic operator providing it.~~

~~3. The origin of an economic operator shall be deemed to be:~~

~~(a) in the case of a natural person, the country of which the person is a national or where that person he has a right of permanent residence;~~

~~(b) in the case of a legal person either of the following:~~

~~(i) if the legal person does not have a commercial presence within the Union, the country under the laws of which the legal person is constituted or otherwise organised and in the territory of which the legal person is engaged in substantive business operations~~ **entailing a continuous and effective link with the economy of the country concerned;**

~~(ii) For the purposes of point (b)(i), if the legal person is not engaged in substantive business operations in the territory of the country in which it is constituted or otherwise organised, the origin of the legal person shall be that of the person or persons which own or control the legal person.~~

~~A legal person shall be considered to be "owned" by persons of a given country where more than 50 % of the equity interest in it is beneficially owned by persons of that country.~~

~~For purposes of this Regulation/Article a legal person shall be considered to be "controlled" by persons of a given country where such persons have the power to appoint more than half of the undertaking's administrative, management or supervisory body, to hold the majority of the undertaking's subscribed capital, to control the majority of the votes attaching to shares issued by the undertaking or otherwise to legally direct its actions.~~

~~(ii) if the legal person has a commercial presence within the Union, the Member State where the legal person is established and in the territory of which it is engaged in substantive business operations such that it has a direct and effective link with the economy of that Member State.~~

~~For the purposes of point (b)(ii), if the legal person is not engaged in substantive business operations entailing a direct and effective link with the economy of a Member State, the origin of the legal person shall be that of the person or persons which own or control the legal person.~~

~~A legal person shall be considered to be "owned" by persons of a given country where more than 50 % of the equity interest in it is beneficially owned by persons of that country.~~

~~A legal person shall be considered to be "controlled" by persons of a given country where such persons have the power to appoint a majority of its directors or otherwise to legally direct its actions.~~

4. Where an economic operator is a group of natural or legal persons and/or public entities, and at least one of such persons or entities originates from the third country whose economic operators and/or goods and services are subject to the implementing act on international procurement, **the implementing act shall equally apply to tenders submitted by that group shall be deemed to originate from such third country. This shall not apply in cases in which such persons' or entities' participation in a group amounts to less than 10% of the value of the contract in question. A contracting authority or a contracting entity may decide in procurement or concession documents whether to apply this de minimis provision.**

5. ~~Should the contracting authority or contracting entity not be in a position to determine the origin of an economic operator, such economic operator shall be considered as originating in the third country whose economic operators and/or goods and services are subject to the IPI measure. For the application of Article 5 and 6 ('Additional contractual obligations upon the successful tenderer'), the origin of a good shall be determined in accordance with Article 59 to 62 of Council Regulation (EEC) No 952/2013, while the origin of a service shall be determined on the basis of the origin of the economic operator providing it.~~

[The Presidency suggested to delete the following Articles: Article 4, Exemption for goods and services originating in least-developed and certain developing countries; Article 5, Exemption for tenders submitted by SMEs]

Chapter II INVESTIGATIONS, CONSULTATIONS, MEASURES AND CONTRACTUAL OBLIGATIONS

Article 4 6

Investigation and consultations

1. If the Commission considers it to be in the interest of the European Union, it may, on its own initiative or upon request of interested parties or a Member State, initiate an investigation into alleged third country discriminatory measure or practice by publishing a notice **of initiation** in the Official Journal of the European Union. This notice shall include the Commission's preliminary assessment of the third country measure or practice and invite interested parties and Member States to provide information to the Commission within a specified period of time.

2. Upon publication of the notice, the Commission shall invite the third country to submit its views, provide information and enter into consultations with the Commission aimed at removing the third country discriminatory measure or practice. The Commission shall regularly inform Member States **within the Committee set up by Article 7 of the Council Regulation (EU) 2015/1843 (Trade Barriers Regulation)**¹, mentioned in Article 9 of this Regulation.

3. The investigation and consultations shall be concluded within a period of nine months after the publication of the notice **of initiation**. In duly justified cases, the Commission may extend this period by five months **and inform the third country, all interested parties and Member States.**

4. **The Commission shall terminate the investigation where it** ~~Where the Commission concludes as a result of its investigation that the alleged third country discriminatory measure or practice is not maintained or that it does not result in restrictions~~ **a serious and recurrent impairment of access of** ~~to access by economic operators or goods and services from the European Union to the public procurement or concession markets of the third country, the Commission shall terminate the investigation.~~

5. Upon conclusion or termination of the investigation and consultations, the Commission shall make publicly available a report recording its main findings and estimations.

6. The Commission may suspend the investigation and consultations at any time if the third country:

(a) takes satisfactory corrective measures, or

(b) undertakes commitments in an international agreement towards the European Union ending or phasing out the third country discriminatory measure or practice.

The Commission may resume the investigation and consultations at any time if it concludes that the reasons for the suspension are no longer valid.

~~[The Presidency suggested to delete Article 7 as its provisions have been integrated in Article 6.]~~

Article 5 8

Implementing acts on international procurement

1. Where the Commission finds, following an investigation and consultations pursuant to Article 4, that a third country maintain discriminatory measure or practice regarding non-covered ~~procurement goods or services exists~~, it may, if it considers it to be in the interest of the European Union, adopt an implementing act on international procurement **as provided in paragraph 4 of this article**.

2. The implementing act on international procurement shall be determined on the basis of the following criteria, in light of available information and the European Union's interest:

~~(a-e)~~ proportionality of the implementing act on international procurement with regard to the third country discriminatory measure or practice;

~~(b-d)~~ availability of alternative sources of supply for the goods and services concerned, in order to avoid or minimise any negative impact on contracting authorities or contracting entities, downstream industries, or final consumers within the European Union.

~~3. The IPI measure shall only apply to contracts with an estimated value equal to or above EUR [] exclusive of value added tax for works and concessions; and with an estimated value equal to or above EUR [] exclusive of value added tax for goods and services. The IPI measure shall also apply 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 5.350.000 net of value added tax for works, equal to or above EUR 139.000 for goods and services awarded by central entities as defined in Directive 2014/24/EU, EUR 214.000 for goods and services awarded by sub-central entities as defined in Directive 2014/24/EU, equal to or above EUR 428.000 net of value added tax for goods and services awarded by contracting entities as defined in Directive 2014/25/EU. In a time for which framework agreement or purchasing system were established or in a given financial year, share of goods and services from countries addressed in an implementing act on international procurement in accumulated subsequent purchases from one economic operator under specific framework agreement or dynamic purchasing system, may not exceed 50% of the value of threshold indicated in the first sentence of this paragraph.~~

~~4. Pursuant to the~~ **In its implementing act on international procurement, the Commission may decide, within the scope defined in paragraph 6 of this article, to restrict the access of operators,**

goods or services from third countries to procurement and concession contracts by requiring relevant contracting authorities or contracting entities to ~~adopted in accordance with Article []~~, setting out the IPI measure, contracting authorities and contracting entities shall:

(a-e) exclude tenders submitted by economic operators originating in the third country **which is subject to the implementing act on international procurement**; or

(b) impose a price adjustment measure or score adjustment measure on tenders submitted by economic operators originating in ~~the~~ **that** third country. ~~and~~

~~(f) include, among the conditions of the contract with the successful tenderer:~~

~~(i) a prohibition to subcontract the majority of the contract value to economic operators originating in the third country,~~

~~(ii) a commitment that, for the duration of the contract, no more than [50%] of the total value of the contract is made of goods and/or services originating in the third country whether such goods and/or services are purchased directly or by a subcontractor,~~

~~(iii) an obligation to provide evidence corresponding to point (ii) to the contracting authority or the contracting entity,~~

~~(iv) a penalty, in case of breach of the commitments referred in points (i), (ii) and (iii), of at least [%] of the total value of the contract.~~

5. The price adjustment measure or score adjustment measure referred to in paragraph 4(a) shall apply only for the purpose of the evaluation and ranking of the price component of the tenders. It shall not affect the price due to be paid under the contract to be concluded with the successful tenderer.

6. The implementing act on international procurement, adopted in accordance with Article **9.2**[], shall specify its scope of application, such criteria as:

(a-g) the sectors or the categories of goods, services and concessions as well as any applicable exceptions,

(b-h) specific categories of contracting authorities or contracting entities;

(c-i) specific categories of economic operators;

(d-j) specific thresholds **equal or** above those set out for Directive 2014/23/UE, Directive 2014/24/UE and Directive 2014/25/UE;

(e-k) as regards the price adjustment measure or score adjustment measures referred to in paragraph 4(~~ab~~), the **percentage** value of the price adjustment ~~whereas this value shall range between 20-40% not exceed []%~~ of the price of the tender **depending on the third country and sector of goods, services, works or concessions envisaged.**

7. Also when exclusion of economic operator is established as a measure in adopted implementing act on international procurement, the contracting authorities or contracting entities may decide to apply in procurement procedure or concession procedure a price adjustment measure or score adjustment measure of 40% of the price of the tender. Contracting authorities or contracting entities should announce this possibility in the notice of the procurement or in the notice of the concession.

8. The Commission may withdraw the implementing act on international procurement or suspend its application if the third country takes satisfactory corrective actions. If the Commission considers that the corrective actions have been rescinded, suspended or improperly implemented, it shall make publicly available its findings and may reinstate the application of the implementing act on international procurement at any time.

Article 6 [New]

Additional contractual obligations upon the successful tenderer

1. If an implementing act on international procurement is adopted, contracting authorities and contracting entities shall also include, among the conditions of the contract with the successful tenderer:

(a) a prohibition to subcontract more than 50% of the contract value to economic operators originating in a third country which is subject to an implementing act on international procurement,

(b) a commitment that, for the duration of the contract, goods and/or services supplied or provided in the execution of the contract and originating in the third country which is subject to the implementing act on international procurement (an addressed good or goods and/or services) represent no more than 50% of the total value of the contract, whether such goods and/or services are supplied or provided directly by the tenderer or by a subcontractor.

(c) an obligation to provide adequate supporting evidence corresponding to point (b) to the contracting authority or the contracting entity,

(d) a proportionate penalty, in case of breach of the commitments referred in points (a), (b) and (c) of at least 10% of the total value of the contract.

2. For the purposes of paragraph 1(c) it is sufficient to provide supporting evidence that more than 50% of the total value of the contract originates in countries other than the third country subject to the implementing act on international procurement.

3. Supporting evidence must be provided upon request of the contracting authority or contracting entity and at the latest upon completion of the execution of the contract.

4. A reference to the additional conditions laid down in this article shall be included by contracting authorities and contracting entities in the documents for procurement and concession award procedures falling within the scope of an implementing act on international procurement. Tenders submitted by autonomous SMEs as defined in the Commission recommendation 2003/361/EC originating in the European Union or in a third country with which the European Union has concluded an international agreement in the field of public procurement, shall be exempted from additional contractual obligations in Article 6, provided that those SMEs manufacture the addressed good or goods for the supply of which they were awarded the contract.

Article 6(1) Exempting of contracting authorities and contracting entities

1. Upon a duly justified request by a Member State the Commission may adopt, with a view to a fair distribution of the tenders subject to implementing acts on international procurement among Member States, a list of sub-national contracting authorities or entities, that are exempted from the application of this Regulation.

2. In its request, the Member State shall provide detailed information on the justification for the request for exemption and the total value of the contracts awarded by all listed contracting authorities or entities over the past 3 years from the 31st December preceding the request for exemption. If that total value of procurements or concessions exempted under this Article amounts to or exceeds 25% of the total value of above thresholds contracts falling under the scope of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU that were awarded in the requesting Member State in the same 3-year period, no further exemption shall be granted.

3. The Commission informs Member States before adopting an exemption list. The exemption list, published in the Official Journal of the European Union, is adopted for a period of three years and can be revised or renewed for another three years upon duly justified request by the Member State concerned.

[The Presidency suggested to delete the following Articles:]

Article 9, Authorities or entities concerned;

Article 10, Withdrawal or suspension of price adjustment measures, as it is subsumed in Article 6, Investigation and consultations

Article 11, Application of price adjustment measures]

Article 7 ~~12~~

Exceptions

1. Contracting authorities and contracting entities may decide not to apply the implementing act on international procurement with respect to a **public** procurement or a concession **award** procedure if:

(a) there are only bids from economic operators originating in the country subject to an implementing act on international procurement; or only the bids submitted by economic operators originating in the country subject to an implementing act on international procurement meet the **tender** requirements ~~of the contracting authority or contracting entity;~~

(b) the application of the measure would lead to a disproportionate increase in the price or costs of the contract;

(c) there are grounds established in the Directive 2014/23/UE, in the Directive 2014/24/UE or in the Directive 2014/25/UE to award directly procurement or single concession contracts without competition.

2. Where a contracting authority or contracting entity intends not to apply an implementing act on international procurement, it shall notify the Commission before the award of the contract.

2. Where a contracting authority or contracting entity intends not to apply on the basis of paragraph 1 (a) – (b) *(at original text (a) – (c))*, it shall announce it in an appropriate notice adopted on the basis of Commission Implementing Regulation (EU) 2019/1780 of 23 September 2019¹. The Commission may modify those standard forms for the purposes of this Regulation by

¹ Rozporządzenie wykonawcze Komisji (UE) 2019/1780 z dnia 23 września 2019 r. ustanawiające standardowe formularze do publikacji ogłoszeń w dziedzinie zamówień publicznych i uchylające rozporządzenie wykonawcze (UE) 2015/1986 („e-formularze”) (Dz.Urz. U.E. z dnia 25.10.2019, L 272/7)

means of implementing acts. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9.3.

3. The Commission may ask the contracting authority or contracting entity concerned for additional information regarding information published in accordance with paragraph 2.

~~{The Presidency made no textual proposals for Article 13, and did not discuss the provisions thereafter, except Article 17 which the Presidency suggested to delete}~~

Article 7(1) Facilitating tools/Implementation tools

1. The Commission shall assist contracting authorities and contracting entities in application of implementing acts on international procurement by providing appropriate guidelines on application of implementing acts on international procurement. The guidelines will expand on rules of origins of targeted goods, services or sectors and also on interpretation of crucial provisions of the Regulation.

2. The Commission will provide for an on-line tool for contracting authorities and contracting entities providing for information on implementing acts on international procurement in force and also allowing for verification if a particular public or concession contract falls under implementing acts on international procurement in force.

3. The Commission shall adopt a list of supporting evidence that contracting authorities and contracting entities could use to establish origins of economic operator applying for a public contract falling into scope of implementing acts on international procurement. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9.3.~~Article 8 13~~

Review procedures ~~Implementation~~

1. Council Directive 89/665/EEC and Council Directive 92/13/EEC shall apply accordingly to activities of contracting authorities and contracting entities undertaken in the course of the procurement or concession award procedure related to the performance of the obligations set out in the IPI measures.

2. In case of infringement of the implementing act on international procurement has influenced the outcome of the procurement procedure or concession procedure, such contract may be considered ineffective by a review body independent of the contracting authority as provided by Directive 89/665/EEC and Directive 92/13/EEC.

Chapter III IMPLEMENTING POWERS, REPORTING AND FINAL PROVISIONS

~~Article 9 14~~ Committee procedure

1. The Commission shall be assisted by the Advisory Committee for Public Contracts established by Council Decision 71/306/EEC² and by the Committee set up by Article 7 of the Council Regulation (EU) 2015/1843 (Trade Barriers Regulation)³. These committees shall be committees within the meaning of Article 3 of Regulation (EU) No 182/2011.

² Council Decision (71/306/EEC) of 26 July 1971 setting up an Advisory Committee for Public Works Contracts (OJ L 185, 16.8.1971, p. 15).

3 Regulation (EU) 2015/1843 of the European Parliament and of the Council of 6 October 2015 laying down the European Union procedures in the field of the common commercial policy in order to ensure the exercise of the European Union's rights under international trade rules, in particular those established under the auspices of the World Trade Organization (Trade Barriers Regulation), (OJ L 272, 16.10.2015, p. 1).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply and the competent committee shall be the Committee set up by the Trade Barriers Regulation.

3. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply and the competent committee shall be the Committee established by Council Decision 71/306/EEC.

Article 10-15 Confidentiality

1. Information received pursuant to this Regulation shall be used only for the purpose for which it was requested.

2. Information submitted by economic operators in execution of the provisions of this Regulation are subject to the confidentiality rules of Directive 2014/24/EU.

3. The supplier of information may request to treat information submitted as confidential. The request for confidentiality shall be accompanied by a non-confidential summary of the information or a statement of the reasons why the information cannot be summarised.

4. If a request for confidentiality is not justified and if the supplier is unwilling either to make the information public or to authorise its disclosure in generalised or summary form, the information in question may be disregarded.

5. Paragraphs 1 to 4 shall not preclude the disclosure of general information by the European Union authorities. Such disclosure must take into account the legitimate interest of the parties concerned in not having their business secrets divulged.

Article 11-16 Reporting

~~By 31 December 2018~~ Three years after the date of entry into force of this Regulation, and at least every three years thereafter, the Commission shall submit a report to the European Parliament and the Council on the application of this Regulation and on progress made in international negotiations regarding access for the European Union economic operators to public contract or concession award procedures in third countries undertaken under this Regulation. To this effect, Member States shall upon request provide the Commission with appropriate information. Commission may not request from Member States information that is accessible through TED or can be achieved through processing information accessible through TED.

Article 12 Review

No later than four years after the adoption of an implementing act or no later than 5 years after the date of entry into force of this Regulation, whichever is the earlier, the Commission shall review the scope, functioning and efficiency of this Regulation, and shall report its findings to the European Parliament and the Council.

Article 13-18 Entry into force

This Regulation shall enter into force on the 60th day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Annex 2

Detailed PL proposals of changes to recitals of the IPI Regulation

8. If the country concerned is a Party to the WTO Agreement on Government Procurement or has concluded a trade agreement with the EU that includes provisions on public procurement, when the restrictive practices relate to procurement covered by market access commitments undertaken by the country concerned towards the European Union, the provisions of Enforcement Instrument are applied.

18. Given the overall policy objective of the Union to support the economic growth of least developed countries (LDCs) and their integration into global value chains it would in principle not be in the Union's interest to start an investigation against such countries under this Regulation. Consequently, this Regulation is not intended to apply to LDCs benefitting from the "Everything But Arms" arrangement or to GSP+ beneficiary countries as defined in Regulation (EU) No 978/2012. The Commission should take due account the specific situation of LDCs when considering the need to adopt IPI measures and when formulating their content. The Commission should take into account the specific situation of LDCs when considering the need to adopt IPI measures and when formulating their content.

29. In case of misapplication by contracting authorities or contracting entities of exceptions to implementing acts on international procurement limiting access of non-covered goods and services, the Commission should be able to apply the corrective mechanism of Article 3 of Council Directive 89/665/EEC⁹ or Article 8 of Council Directive 92/13/EEC¹⁰. In addition, contracts concluded with an economic operator by contracting authorities or contracting entities in violation of **implementing acts on international procurement** limiting access of non-covered goods and services may be declared ineffective by relevant bodies in whole or in remaining part.