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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 26 March 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Commission staff working document
Impact assessment
Accompanying the proposal for a Regulation of the European Parliament and of
the Council on the access of third-country goods and services to the Union's
internal market in public procurement and procedures supporting negotiations
on access of Union goods and services to the public procurement markets of
third countries
Annex

Delegations will find attached Commission document SWD(2012) 57 final - Annex - Part 10/11.

Encl.: SWD(2012) 57 final - Annex - Part 10/11



EUROPEAN COMMISSION

Brussels, 21.3.2012
SWD(2012) 57 final

Annex - Part 10/11

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

**establishing rules on the access of third country goods and services to the European
Union's internal market in public procurement and procedures supporting negotiations
on access of European Union goods and services to the public procurement markets of
third countries**

Annex

{COM(2012) 124 final}
{SWD(2012) 58 final}

ANNEX 10
FOLLOW-UP OF THE FIRST OPINION OF THE BOARD

#	Action	Opinion	Checklist page	Check list box	Page (new IA)	Action	Page (old IA)
0.00	Steering Group						
0.10	Consultation of steering group					Still to be done	
0.20	Take onboard first batch of comments from Steering Group meeting (05 OCT)					cf. infra comments from DG ENTR/ECFIN/SJ	
1.00	Stakeholders consultation						
1.10	Incorporate views of consultation of European Social Partners (FEB 2011)	C5	8	14	6	Comments added on IA	2
1.20	Present opinion of NGOs (separate from trade unions)	C5	8	14	7	Comments added on IA and Annex 2	4/ Anx 2
1.30	Present opinion of trade opinions (separate from NGOs)	C5	8	14	7	Comments added on IA and Annex 2	4/ Anx 2
1.40	Identify stakeholders that want social and env considerations as amendment of EU PP dir	C5	8	14	Anx 2	Reference to NGOs & fair trade + trade unions and ILO conventions	4/ Anx 2
1.60	Reflect views of stakeholders: add references in text of IA overall	C5	8	14	Pb definition: footnote 44 (p17), page 13, 3.4.1/3.4.5/3.4.6 in pages 18-19, Options: footnote 67, page 27 under 5.5, Impacts: footnote 77 (cf. annex 4)	references on the consultation of stakeholders have been added to the problem definition (e.g. contracting authorities implementation problems, types of restrictions faced, economies of scale, consequences of barriers, level playing field), options (references in introduction of some options, goods to be excluded by the instrument, price penalties problems on buy Europe option), impacts (analysis of burden of notifications)	overall
1.70	Replace subjective assessments like "important" by numbers and percentages	C5	8	14	overall	Comments added on IA and Annex 2	4/ Anx 2
1.80	Replace "close to 215" by "215"	-	9	16	Anx 2/p2	corrected in page 2 of Annex 2	Anx 2/p2
1.90	Add the link in footnote 3 of annex 2, page 1	-	9	16	Anx 2/p2	corrected in page 2 of Annex 2	Anx 2/p2
2.00	Problem definition						
2.01	shorten text	D				32 pages without tables/ 43 pages with tables (hence 3 pages less than in first submission in	

									spite of additional options and impacts to analyse)	
2.10	Clarify the nature of the problem									
2.11	what is the main issue? Answer: Closure of third countries markets (*)	B	1	2	15 to 17				Prob def has been redrafted. Main issue: lack of leverage to open 3rd countries PP markets + no respect of current PP int'l obligations by EU c.a.	pp 6 to 18
2.12	explain why asymmetric trade liberalisation could have negative impact on welfare (<i>econ theory</i>)	-	1	2	19 & 20				cf. 3.4.6 uneven level playing field	16 & 17
2.13	explain why sectoral trade deficits are suffered by the EU (<i>econ theory</i>)	-	1	2	19 & 20				cf. 3.4.6 uneven level playing field	16 & 17
2.14	explain why status quo leads to job losses: find evidence (<i>econ theory</i>)	-	1	2	18				cf. 3.4.3 - EU jobs are not created and in some cases they are destroyed by the ARTIFICIAL distortions resulting of protectionist measures	16 & 17
2.15	explain why competition is unfair (<i>econ theory</i>)	-	1	2	19 & 20				cf. 3.4.6 uneven level playing field / link with state aid	16 & 17
2.16	explain why technological transfers are a problem (they also occur in the <i>normal course of trade</i>)	-	1	2	18 & 19				cf. 3.4.4 tech transfers are a problem when they are based on artificial measures driven by industrial policies	16 & 17
2.20	Clarify the scale/magnitude of the problem									
2.21	discuss significance of the problem in view of the size of <i>national PP markets</i>	C1	1	2	8 & 9				cf. 3.1.2 impact is very small in volume but problem affects industries whose turnover amounts to 25% of EU GDP and 31 million jobs; explanation on the level of foreign penetration in the EU PP market	6 & 14
2.22	take into consideration the "evidence from the Single Market"	C1	1	2	Box 1 p11				Box 1 p11+ in-depth explanation on the level of foreign penetration in the EU PP market in Annex 3	14
2.23	take into consideration constraints imposed by existing market access commitments (problems of <i>foreign companies in EU PP</i>)	C1	1	2	17				part 3.3 - 1st paragraph + footnote 41	14
2.24	indicate magnitude of the problem for SMEs	C1	1	2					No available data	
2.25	Indicate magnitude of the problem for the economy in general	C1	1	2	8				cf. 3.1.2 - size of the problem in terms of EU GDP and exports, but also information on the sectoral impact - also, for jobs	6 & 9
2.26	indicate share of contracts awarded to foreign companies	C1	1	2	Box 1 p11				Box 1 p11+ in-depth explanation on the level of foreign penetration in the EU PP market in Annex 3	15
2.27	justify values of 90% and 100% in openness of the EU	-	1	3	-				no more reference to the 90% of opening in ES (because of the ES law restrictions)	-

2.30	Clarify the desired effects									
2.31	in terms of accessibility to foreign PP markets: provide benchmark	B & C1	-						cf. 3.6 - 4 billion EUR when other countries open up the PP markets where they have offensive interests (rather than the idealistic 12 billion EUR if all markets were open)	14, 19-20
2.32	in terms of accessibility to EU PP markets by 3rd CY <i>goods/firms: benchmark</i>	B & C1	-						cf. 3.6 - no benchmark - foreign penetration should be in line with the normal course of trade	19-20
2.33	in terms of Single Market integration	B & C1	-						cf. 3.6 - measures must be applied consistently	19-20
2.34	in terms of environmental standards	B & C1	-						cf. 3.6 - comment on the fact that these issues belong to the modernisation of PP policy	19-20
2.35	in terms of labour standards	B & C1	-						cf. 3.6 & footnote 57- comment on the fact that these issues belong to the modernisation of PP policy	19-20
2.40	Consistency of text and tables									
2.41	renumber tables	-	1					2	Tables are re-numbered and sources done (additional verification always useful)	everywhere
2.42	check consistency of figures in tables	-	1					2	text and tables now refer to 12 trading partners	everywhere
2.43	12, 13 or 14 trading partners?	-	1					2	deleted	everywhere
2.44	are specific "never applied" (p8) or "most of the time never applied" (pX)?	-	1					3	Not applicable anymore - problem definition has extensive data on errors in contract notices.	-
2.45	Re-draft footnote on GPA question in contract notices (refers to numbers and value- confusing)	-	1					3		-
2.50	Additional explanations									
2.51	Explain current difficulties of 3rd CY importers in the EU PP market	-	1					3	part 3.3 - 1st paragraph + footnote 41	
2.52	Explain the problem of fragmentation of the internal market	-	1					3	cf. 3.6 - 4th bullet point - PROs	18
2.53	Explain concept of "offensive interests"	-	1					3	cf. footnote 20	8
2.60	Legal issues									
2.61	is there any legal base to consider that non covered PP is closed?	-	1					3	3.1.1 - departure of national treatment - reference added in text	6
2.62	are there examples of breaches of EU int'l commitments?	-	1					3	No, only theoretical ones. No active discrimination was found	-
2.63	why was article 59 never used in the past?	-	1					3	cf. IA analysis	-
	clarify whether the fact many countries consider that non-cov procurement is closed is legal or not								3.1.1 - departure of national treatment - reference added in text	
2.64		-	1					3		6
2.65	review text on subsidiarity	-	1					3	cf. 3.5	18

2.70	Baseline scenario												
2.71	on-going negotiations (GPA, CA, CN, IN, BR): maximum outcome: <i>provide benchmark (**)</i>	C1	2	4	24					cf. optimistic scenario in baseline		22	
2.72	on-going negotiations (GPA, CA, CN, IN, BR): minimum outcome: <i>provide benchmark (**)</i>	C1	2	4	24					cf. pessimistic scenario in baseline		22	
2.73	impact of launch of FTA negotiation with Japan	C1	2	4	24					baseline scenario		22	
2.74	impact of current revision of PP directives	C1	2	4	24					baseline scenario		22	
2.75	what actions for Commission if persistent breaches to the Treaty?	C1	2	4	24					baseline scenario		22	
2.76	justify the horizon of 5 years	-	2	4	-					no need anymore - reference to 5 years deleted		-	
3.00	Objectives												
3.10	Sharpen the distinction between specific and operational objectives	-	4	4	?					?		?	
3.20	Why is there an objective "clarify rules of origin"? - <i>explain</i>	-	4	4	23					it has been merged with objective OO3 of overall clarification of rules		-	
3.30	Consistency of terminology in problem tree and objectives				Anx 1					New problem tree in Annex 1		Anx 1	
4.00	Options												
4.10	Simplify and clarify presentation of options												
4.11	shorten text - avoid repetition in presentation of options	-	6	5						shortened			
4.12	shorten text - avoid repetition in discussions of the scope of the instrument	-	6	5						done		-	
4.14	clarify contents: explain how each option would address identified problems	-	6	5	24-28					introductory sentences		20-27	
4.15	rather than sub-options, justify a choice for rules of origin in <i>services and justify it</i>	-	6	5	-					done under footnote 64		23	
4.16	no need to explain "ground for exceptions"	-	6	5	-					deleted		-	
4.17	no need to explain again the concept of non-covered procurement	-	6	5	-					deleted		-	
4.18	clarify the "substantial reciprocity test"	-	6	5	28					cf. footnote 70		24	
4.20	Add option 2B on improvement of existing negotiations (GPA/FTA) - "target neg partner forcefully"	C2	6	5	25					added		24	
4.30	Add option 3C on closure by default: notification only for contracts awarded to 3rd countries	C2	6	5	27					added		27	
4.40	Add option 4 on improvement of existing directives (strategic PP + article 58 overall with guidance)	C2	6	5	27					added		27	

4.50	Add option 5 on abnormally low tenders	C2	6	5	27	added	28
4.60	Add option 6 'Buy Europe' akin to Buy American/Buy Chinese (to be discarded)	-	6	5	27	added	28
4.70	Legal issues						
4.71	provide int'l legal basis of impose restrictive measures in response to the absence of sufficient access to other PP markets as PP disciplines are excluded from GATT and GATS	-	6	5	8	It is legal -cf. 3.1.1 - departure of national treatment - reference added in text	6
4.72	justify the choice of the instrument in the preferred option	-	6	5	40	cf. 7.1.3	18
5.00	Analysis of impacts						
5.10	Methodology						
5.11	Add short text on the methodology to increase transparency of presentation	C3	9	6	29	added, cf. footnotes 76-77-78-79	28
5.12	Add short text on the methodology to justify assumptions	C3	9	6	29	added	28
5.13	Retaliation: use different assumptions (sensitivity analysis)	-	9	6	30, 40	cf. 6.3.2, Chapter 7 tables 15, Box 7 p30	40
5.14	Retaliation: not applicable for countries that apply already protectionist measures	C3	9	6	30	favoured retaliation scenario: "simple retaliation" does not include retaliation from countries that apply protectionist measures	28
5.15	Retaliation: why would countries retaliate as "open trade" is beneficial economically	-	9	6	30	"Simple retaliation" takes this argument onboard (cf. box 7)	31
5.16	Increase of exports: use different assumptions (sensitivity analysis)	-	9	6	29-30	6.3.1 - exports have been included as an impact and as benchmark against which the costs of all options are compared, including the baseline scenario.	40
5.17	"protectionist hysteresis" - qualitative asmt NOT for the calculation of leverage	-	9	6	-	deleted	-
5.18	explain why loosening of local ets/content requ -> relocation of businesses in the EU	-	9	6	18-19	explanation on artificial measures in pb def	16
5.20	Add impacts						
5.21	Analysis of impacts: environment	C3	8	6	28-37	added	30-43
5.22	Analysis of impacts: supply chain	C3	8	6	28-37	added	30-43
5.23	Analysis of impacts: consumers	C3	8	6	28-37	added	30-43
5.24	Analysis of impacts: competition	C3	8	6	28-37	added	30-43
5.25	Analysis of impacts: competitiveness	C3	8	6	28-37	added	30-43
5.26	Analysis of impacts: public finances	C3	8	6	28-37	added	30-43

5.27	Analysis of impacts: jobs	C3	8	6	30-39	added	30-43
5.30	Option "nothing happens"						
5.31	explain why status quo leads to job losses: find evidence (<i>econ theory</i>)	-	9	6	18 & 32	explanation on artificial measures in pb def (3.4.3) and footnote 48 & 80	17 & 32
5.40	Option 2 - Article 58						
5.41	explain why appl of art58 would put EU bidders in same <i>situation as 3rdCY because of retaliation</i>	-	9	7	-	deleted	-
5.42	explain choice of 25%	-	9	7	30	Section 6.2 and footnote 79 explains that the 25%-50%-75% are relative rates of usage to rank options	30
5.50	Option 3A						
5.51	explain problems for high performance computer	-	9	7	35	page 34 footnote 94	32
5.52	explain why restrictions don't apply to 4 goods (fuel, pharma,...)	-	9	7	27	cf. page 27 +footnotes 68, 69 & 78	23
5.53	inconsistencies between text and tables	-	9	7	everywhere	tables checked	everywhere
5.54	add re-affectation effect	-	9	7	33-34	page 33-34+ footnote 92 + Annexes 4 & 7	32
5.54	add negative effect on GDP - explain	-	9	7	-	deleted	-
5.60	Option 3B						
5.61	consistency of sentences for pre-emption	-	9	7	-	deleted	-
5.62	explain choice of 25%	-	9	7	30	Section 6,2 and footnote 79 explains that the 25%-50%-75% are relative rates of usage to rank options	30
5.63	Impact on administrative burden: add impact of 6-8 weeks	-	9	7	37	page 37+ footnotes 103, 104 + Annex 4 p31	38
5.64	Impact on administrative burden: add impact for Commission (resources)	-	9	7	37	page 37+ footnotes 103, 104 + Annex 4 p31	38
5.65	Impact on administrative burden: add impact for Commission (market supervision <i>and surveys</i>)	-	9	7	37	page 37+ footnotes 103, 104 + Annex 4 p31	38
5.66	need to draft market supervision reports	-	9	7	-	?	-
5.67	add that firms won't naturally cooperate to file complaint against 3rd CY (** 6), they will prefer <i>via MS or trade assoc</i>	-	9	7	-	deleted	-
5.70	Analysis of impacts for new options 3C						
5.71	Impact on administrative burden: add impact of 6-8 weeks	-	-	-	37	page 39 + annex 4 pp 44-46	39
5.72	Impact on administrative burden: add impact for Commission (resources)	-	-	-	37	page 39 + annex 4 pp 44-46	39
5.73	Impact on administrative burden: add impact for	-	-	-	37	page 39 + annex 4 pp 44-46	39

	Commission (market supervision and surveys)											
5.74	Check all impacts	-	-	-	-	-	-	-	pages 35-36			-
5.80	Analysis of impacts for new options 4 explain why appl of art58 would put EU bidders in same situation as 3rdCY because of retaliation	-	-	-	-	-	-	-	deleted			-
5.81		-	-	-	-	-	-	-	Section 6.2 and footnote 79 explains that the 25%-50%-75% are relative rates of usage to rank options			30
5.82	explain choice of 25%	-	-	-	-	-	-	30				-
6.00	Comparing the options											-
6.10	Comparison table											
6.11	explain difference between '0' and "=-"	-	11	7	40	40	40	40	done - cf. table 14			39
6.20	Case for preferred option											
6.21	Reinforcement in absolute and relative terms	C4	-	-	42	42	42	42	done - cf. Chapter 7			43-46
6.23	Explain why stakeholders least preferred option was actually selected	C4	-	-	43	43	43	43	new point 7.1.2			45
6.24	comparison between 3A and 3B should take into account admin burden of 6-8 weeks	C4	-	-	40	40	40	40	Table 14 takes into account - also, cost of opportunity of waiting 6-8 weeks taken into account in calculation of admin burden)			42
6.30	Link text and table											
6.31	option 2 "=-" for clarification objective and "-" for S1 (exports) and S2 (leverage)	-	11	7	39	39	39	39	corrected			-
6.32	why are leverage effects in option 3A and 3B identical?	-	11	7	39	39	39	39	Option 3B has better leverage now			42
6.33	explain why is there a positive impact of option 3B to exports	-	11	7	-	-	-	-	deleted as the analysis of impacts on exports has been fully reviewed			42
7.00	Monitoring of objectives											-
7.10	Add indicator for participation of SMEs to int'l procurement		8	12	42	42	42	42	done (proposed indicator to the objective 'increase exports')			42
7.20	Add brief assessment of possibility of compliance issues		8	13	-	-	-	-	?			
8.00	Presentation issues											-
8.10	Pages in all annexes	D	-	-	-	-	-	-	done			-
8.20	Replace appendixes by annexes	D	-	-	-	-	-	-	done			-
8.30	Legiswrite	D	-	-	-	-	-	-	format cleaned and reviewed			-
8.40	All tables must be numbered	D	-	-	-	-	-	-	done			-
8.50	Add table of contents	D	-	-	-	-	-	-	done			-
8.60	Data sources and units in all tables	D	-	-	-	-	-	-	done			-

8.70	error in page 23 - refer to contracts above the thresholds		5	6		done, cf. footnote 65	14
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