



Strategic Public Procurement in EU Trade Policy

Peter KOVACS

Head of Unit B.3 – DG TRADE

6 June 2019

Unhealthy practises...



Structure

- I. EU trade policy: some facts
- II. What do we promote internationally?
- III. Multilateral track: GPA
- IV. Bilateral: FTA
- V. Challenges in GP; International Procurement Initiative
- VI. Contribution to better EU procurement (strategic)

I. EU trade policy: Facts

Significant part of national economies (10-15% of GDP in OECD)

- **Growing importance of GP in:**
 - growth and competitiveness
 - building infrastructure and delivering public services
 - fight against corruption/generating savings

Worldwide procurement market: 8 trillion EUR

EU procurement market: around 2 trillion EUR

Public Procurement contracts in third countries :

- **Considerable international business opportunities** for EU industry
(construction, rail equipment, health-care, etc.)
- turnover of EU industrial sectors depending heavily on public contracts represents some **25% of the EU GDP**

The bulk of new market opportunities are in **emerging third countries**

2/3 of the EU top construction companies' exports sales depend on foreign public procurement

43% of all worldwide railways equipment exports are from the EU

It is estimated that

- **90% of the EU procurement market is “de facto” open to third country bidders**
- **While 53% of the procurement market above thresholds is closed to the EU bidders**
 - **loss of 12 billion EUR (trade with 12 major trading partners)**

EU trading partners have introduced **national preference schemes** or use **offsets** and other **techniques** to restrict foreign access to their market

- Buy America, «Make in India», Indonesia scheme
- **national champions in key sectors**
- **China/railway procurement market** open to EU bidders: dropped from 63% (2009-2011) to 20% (2013-2015)

II. What do we promote?

- Promoting EU trade and economic interests worldwide:
 - Policies / rules
 - Market access:
 - Companies
 - Products (goods and services)
 - Above thresholds

Principles of EU public procurement

- 1) Non-discrimination: no direct or indirect discrimination on geographical/national basis, other restrictions must be justified and proportionate
- 2) Equal treatment: impartiality of process - all tenderers are to be treated in the same manner and provided the same opportunities
- 3) Transparency: sufficient degree of advertising to the market

EU rules

Directive
2014/24/EU
on PP replacing
Directive
2004/18/EC

Directive
2014/25/EU on
utilities replacing
Directive
2004/17/EC

New Directive
2014/23/EU on
concessions

Directives on defence procurement
and remedies still applicable and
unchanged

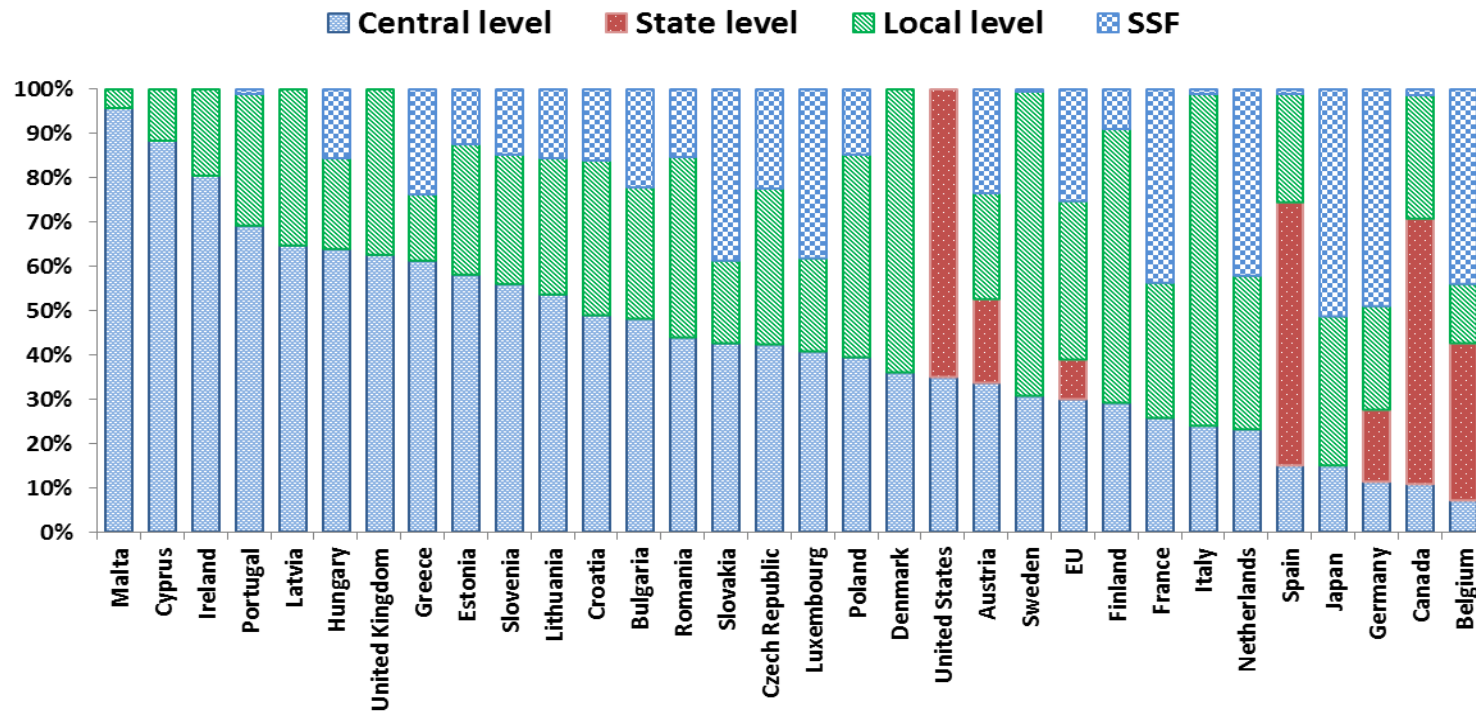
Transposition mostly accomplished

I.A EU Public procurement policies

EU Public procurement Directives (2014)

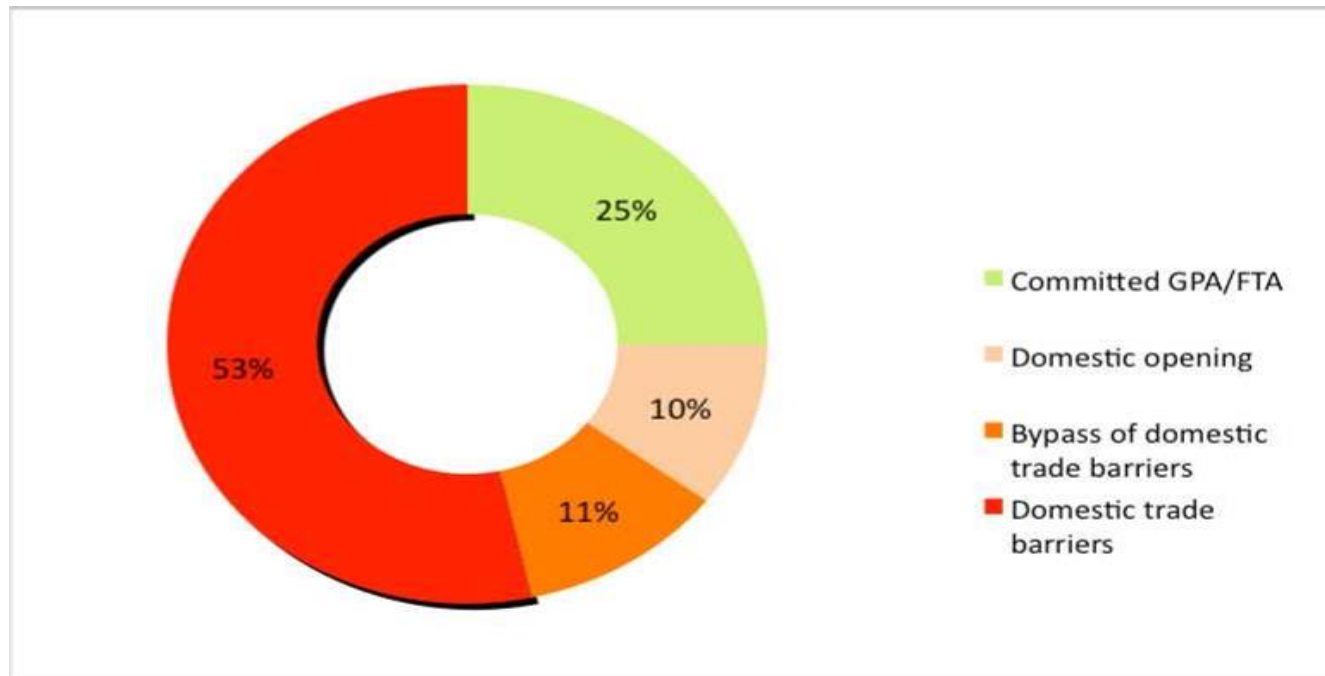
- **achieving best value for money**
- **open, transparent and non-discriminatory procedures—**
- **above thresholds procurement advertised EU wide**
- **Anticorruption, innovation, green, social**

Public procurement at different levels



Source: EUROSTAT, OECD National Account Statistics, own calculations, web access 15 September 2017

Exporting through public procurement - what is open and closed? (12 main non-EEA/EFTA trading partners)



Source: own estimations based on data from COMEXT, WTO, DG MARKT and national accounts

III. GPA

EU: strong advocate for an ambitious **opening of international public procurement markets**

- taken an active role in the World Trade Organization's (WTO) plurilateral **Government Procurement Agreement – GPA**

Government Procurement is outside of the scope of
GATT and **GATS**



Government procurement is excluded from main
non-discriminatory provisions of GATT/GATS

GATT — Article III: 8a, GATS — see Article XIII:1

Room to **maintain or introduce measures that
favour domestic firms and goods**



- **Revised GPA entered into force in 2014**
- 20 Parties, 48 WTO members
- **GPA Parties:** Armenia, **Australia**, Canada, EU (with its 28 Member States), Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, **Moldova**, **Montenegro**, the Netherlands with respect to Aruba, **New Zealand**, Norway, Singapore, Switzerland, Chinese Taipei, **Ukraine** and the United States.
- **Negotiating accession to the GPA:** Albania, *China*, Georgia, Jordan, *Kyrgyz Republic*, *North Macedonia*, Oman, *Russian Federation*, and *Tajikistan*
 - ***UK: accession approved***

Cornerstones:

- **Non-Discrimination**
- **Reciprocity**
- **Obligations apply only to 'covered procurement'**

GPA Rules

- **Transparency**
minimum standards for the publication of procurement opportunities
- **Procedural fairness**
specific requirements (independent national review of complaints etc)

GPA Market access commitments

- The **coverage schedules** determine which procurement is covered by the GPA obligations

Seven Annexes:

- central government entities,
- sub-central government entities,
- other entities (SOEs, etc)
- goods,
- services,
- construction services/works
- and General notes

GPA Market access

- WTO source: GPA provides legally assured market access to covered procurement valued at over 1.7 trillion US dollars annually.
- China and Russia's accessions could greatly to expand this value

International commitments with main trade partners

	TRADING PARTNER		EU27
	Contestable PP Market (Contracts above the GPA thresholds)	Internationally committed (above thresholds)	EU commitments vis-à-vis TRADING PARTNERS (country specific derogations included)
European Union	370	95% (maximum coverage offered)	
United States	559	32%	46%
Japan	96	28%	70%
Canada	59	16%	10%
Korea	25	65%	77%
Mexico	20	75%	n/a
Israel	2,1	75%	n/a
China	83	0%	0%
Russia	18	0%	0%
India	19	0%	0%
Brazil	42	0%	0%
Turkey	23,7	0%	0%
Australia	20	0%	0%
TOTAL	967	25%	18%

Sources: WTO, MARKT own estimations (reflect GPA after conclusion of negotiations 2011)



IV. FTAs negotiated/concluded

MAIN:

Mexico,

Chile,

Canada

Colombia, Peru, Ecuador

Central America,

South Korea,

Georgia,

Moldova,

Ukraine,

SAA

Cariforum

Japan

Switzerland (Bilateral agreement).

FTAs negotiated/not concluded

- **Singapore**
- **Vietnam**

- **Mexico is to deliver on GP**

- **In most of these countries the EU has for the first time obtained:**
 - **commitments concerning procedural standards for public procurement**
 - **market access commitments**

« GPA plus » obligations

- Transparency
- Single website for publication at central and subcentral level
- Mandatory Electronic procurement
- Enhanced remedies: possibility to contest award, 10 days standstill provisions

FTAs: Market access

GPA Parties: Extension of GPA commitments

- **Canada:** additional EUR 32 billion per year of the Canadian public procurement market (all subcentral level plus utilities)
- **Korea** (work concessions)
- **Japan** (subcentral level)

Non-GPA: Vietnam: cities plus hospitals

- **Eliminating offsets/set-asides** (innovation, SMEs, (forced) technology transfer)

Ongoing FTAs Negotiations

- **Mercosur**
- **Australia**
- **New Zealand**
- **Chile**
- **Indonesia**
- **Azerbaijan**

V. Current challenges in GP

- i) EU industry needs to have better access to third countries' procurement markets**
- ii) uneven playing field in the EU public procurement markets**
- iii) Lack of coverage at subcentral level/ Lack of data**

Future perspectives: Ongoing

- **IPI (Action 6 CHINA Communication)**
- **Follow up to China communication**
 - **Maximise the use of the flexibility granted by the public procurement directives**
 - **(China COM-- Action 7a and 7b)**



European
Commission

The International Procurement Instrument

Objective

Open foreign procurement markets by addressing discriminatory measures and practices faced by EU companies in such markets

State of play

- Ongoing legislative process
- Discussions in the European Parliament and in the Council
- In 2019, renewed impetus: the European Council of 22 March called for resuming negotiations on IPI

VI. Links to better EU procurement

- Promoting EU rules and standards
- Setting international rules and standards
- Leveling playing field for EU business
- Creating business opportunities
- Increasing the quality of bids

Conclusion

Trade

<http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/>

GPA:

https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm

EU internal market

https://ec.europa.eu/growth/single-market/public-procurement_en