

European preference in public procurement:

What the proposed EU Public Procurement Act could mean for UK and US businesses

The European Commission (Commission) has proposed a Public Procurement Act (Proposed Regulation) that would allow public buyers to give EU firms preferential treatment in public procurement across the EU. While the Proposed Regulation does not impose a blanket duty on public bodies to buy European, it would give them greater scope to favour EU and treaty-protected suppliers and supply chains. For UK and US businesses competing for public contracts in the EU, the key question will be not where a bidder is established, but rather whether the bidder and its bid benefit from protection under the EU's international treaty commitments. UK businesses would be better positioned than US equivalents under the proposal due to the additional protections provided under the EU-UK Trade and Cooperation Agreement (EU-UK TCA).

While the three existing EU procurement directives are implemented through different national laws in each EU Member State, the Proposed Regulation would replace them with a single, directly applicable Act. This would give suppliers and public buyers a harmonised, consistent set of rules across the EU. The Proposed Regulation would also allow more negotiation and refinement of bids during a competition than is currently permitted. It would also reduce the proportion of contracts that are awarded on price alone, by demanding that quality plays a role in most evaluations.

The proposal sits alongside the Commission's proposed Industrial Accelerator Act, which would introduce targeted "Made in EU" and low-carbon requirements for public procurement in strategic sectors including steel, cement, aluminium, automotive and net-zero technologies. Although the two proposals operate differently, together they illustrate a broader shift towards using public purchasing power to support European industrial capacity, resilience and economic security.

Key takeaways

- **UK and US businesses are not in the same position** – Under the proposal, UK suppliers would generally benefit from broader protection against European preference measures in EU procurement than their US counterparts.
- **Coverage is contract-specific** – The rights of non-EU bidders would depend on the public buyer in question, the contract's value and subject matter, the industry concerned and relevant exclusions. A company may be protected in one EU tender but not another.

- **An EU address is not decisive** – Having an EU subsidiary may help to establish the bidder's status, but it would not guarantee that the procurement is covered or that products, services, works and subcontracted inputs qualify as EU or protected content.
- **Part of a wider shift towards strategic procurement** – The proposal sits alongside the EU's proposed Industrial Accelerator Act, which would introduce "Made in EU" and low-carbon requirements in public procurement in selected strategic sectors. Similar themes can also be seen in Buy American policies in the US (such as the Buy American Act) and increasing emphasis on supply chain resilience, national security and social value in UK procurement.¹
- **No immediate change** – The legislative text is still a proposal and must be agreed and adopted by the European Parliament and the Council of the EU, which may amend it. If adopted, the Proposed Regulation would apply throughout the EU two years after its entry into force.

Why does this matter now?

Although the proposal remains subject to negotiation, businesses bidding for EU public contracts should begin assessing their exposure because:

- The origin of inputs in the supply chain may become more important
- Current bid structures may need adjustment
- Future investment decisions may be influenced by coverage under the new rules

¹ Under the [US/UK Reciprocal Defense Procurement Memorandum of Understanding](#), the US Department of War has waived the applicability of the Buy American Act to products produced or manufactured in the UK. Therefore, procurements by the Department of War treat offers for products manufactured in the UK the same as domestic products, with some limited exceptions.

- Procurement strategies developed today may need to account for a two-year implementation period following adoption.

Background: What “European preference” means

EU procurement rules currently sit in several directives that are implemented by the Member States through separate national laws. The Proposed Regulation would create one EU rulebook for all public contracts, utilities procurement and concessions contracts. It would streamline existing procedures, expand opportunities for negotiation and support a connected digital procurement marketplace. Contract award decisions would generally be based on a price-quality ratio, rather than simply the lowest price, with an emphasis on not only technical quality but also environmental and social factors, innovation, security and supply chain resilience.

The European preference framework divides suppliers and tender content into three broad groups. The first covers EU operators and content. The second covers third country suppliers, goods, services and works that are protected by applicable international procurement agreements – the so-called “covered” interests. The third group consists of non-covered suppliers and content without such protection.

The Proposed Regulation would permit a public buyer, in a given tender, to restrict participation to EU and covered bidders, require qualifying origin for some or all tender content, apply a scoring advantage or reject a tender with insufficient EU or covered content. The Commission would also have the right to impose European preference measures on all public buyers in selected circumstances, including due to concerns about reciprocal market access, security of supply or economic security.

“Covered” does not describe a supplier once and for all. It refers to legal access rights in the context of a particular procurement. Such rights may turn on the identity of the contracting authority, the value of a given contract, whether the purchase concerns goods, services, works or a concession, the relevant industry and any reservation or exclusion that applies.

Security and resilience

Under the Proposed Regulation, public buyers would face a general obligation to protect EU security and public safety at all stages of procurement, from planning to performance and, where necessary, termination of the contract.

Security and public safety interests to be protected would include:

- Critical infrastructure
- Resilience to physical, cyber or hybrid threats
- Prevention against disruption risks (including as a result of dependencies on non-EU suppliers)
- Prevention of espionage, sabotage and technology leakage

- Crisis preparedness, including continuity in case of geopolitical instability
- Information and intellectual property protection
- Cybersecurity

Factors relevant to particular security and public safety risks would include the subject matter of the contract (e.g. assets, data access or dual-use technologies involved) and the characteristics of the economic operator (e.g. ownership, control, financing structure, security track record or exposure to third-country legislation).

Dedicated rules would apply to buyers deemed critical entities for the purposes of the EU Directive on critical entity resilience.² Such buyers would be required to include procurement requirements relating to supply security, economic, physical and geopolitical resilience and supply chain transparency (e.g. supply chain diversification, security of supply and continuity, stockpiling, crisis preparedness or supply chain traceability measures).

Suppliers could be excluded from procurement procedures where they cannot show sufficient reliability to exclude risks to the security and public safety interests of the EU or its Member States. The proposal expressly contemplates reliance on classified information or assessments that cannot be publicly disclosed when making such determinations.

Sectors likely to see the greatest impact

The proposal is likely to have the greatest practical impact in sectors where security, resilience and strategic autonomy feature prominently in procurement decisions, such as:

- Defence and security
- Energy and utilities
- Rail and transport
- Critical infrastructure
- Digital and strategic technologies
- Public telecommunications
- Airport and port infrastructure

Significance of international agreements

Whether UK and US businesses benefit from protected access to a particular EU procurement will largely depend on two international agreements. The World Trade Organization Agreement on Government Procurement (WTO GPA) (which is implemented in the US by the Trade Agreements Act) is an agreement under which participating economies open specified parts of their public procurement markets to one another. The EU, UK and US all participate (along with other countries such as Australia, Canada, Japan, New Zealand and South Korea), but this does not guarantee mutual access to every public contract. Protection depends on factors such as who is buying, what is being purchased, the contract value and the industry concerned.

² Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC [2022] OJ L333/164.

The EU-UK TCA is the post-Brexit bilateral agreement between the EU and the UK. It gives UK businesses access to a broader range of EU public contracts than the WTO GPA alone and additional protections when competing for them. As a result, UK businesses will generally be better protected from European preference measures than US businesses, although the position will depend on the particular contract.

Businesses from other countries that have concluded trade agreements with the EU may also benefit from improved access to procurement under such agreements. Countries that are party to customs union agreements with the EU (e.g. Türkiye) will also enjoy improved access.

UK businesses: Generally broad protection, but not automatic

For covered procurements, the WTO GPA and the EU-UK TCA provide UK suppliers with important procedural safeguards and market access protections. If a public buyer wrongly excludes a UK business or applies a European preference measure unfairly, the supplier may have grounds to challenge the decision and seek an effective remedy.

- **Central government** – UK suppliers generally have protected access to covered procurement by EU institutions and Member State central government authorities above the relevant thresholds.
- **Regional and local authorities** – Protection is also generally available for covered procurement by regional and municipal authorities and other bodies governed by public law.
- **Utilities** – UK suppliers benefit from material coverage in water, energy, transport and postal sector procurement, supplemented in some areas by the EU-UK TCA. Coverage nevertheless remains entity- and activity-specific.
- **Services and construction** – The EU and UK commitments broadly align across major professional, financial, technology, maintenance, environmental and construction services. Construction coverage is generally broad above the relevant threshold, and the bilateral arrangements also address certain works concessions.

The relatively broad scope of the EU-UK TCA does not mean that every UK bid would be protected. Coverage may be absent below the relevant threshold, where the buyer is not listed, for excluded activities or services, or where defence, security, broadcasting, agricultural support or other reservations apply. The practical position would therefore vary from tender to tender. A UK business may qualify for EU-equivalent treatment in one procurement but not another, depending on who is buying, what is being purchased, the contract value and the sector in question.

It should also be noted that in response to the Proposed Regulation some governments, most notably France, have expressed reservations about allowing the UK to have broadly equivalent access to European procurement as the 27 EU Member States.

US businesses: Meaningful access, but wider gaps

US businesses also benefit from the WTO GPA, but the EU-US procurement relationship is subject to wider limitations. A US supplier may be protected in one EU competition and fall outside the protected group in another, even where the contracts appear commercially similar.

- **Central government** – US suppliers retain meaningful access to procurement by covered EU and Member State central government entities, particularly for generally covered goods, professional and technology services covered by both parties' commitments and qualifying construction contracts. Entity and subject matter exclusions still apply.
- **Regional and local authorities** – US businesses may face the greatest gaps in protection when competing for contracts awarded by regional and local public bodies. These include contracts awarded by regional governments, cities and municipalities, public hospitals, universities and other public bodies, where the EU's commitments may not guarantee access for US suppliers.
- **Utilities and infrastructure** – Significant gaps affect areas such as water, airports, urban transport, rail and certain port related procurement. Opportunities may remain in other utilities markets, but coverage is not uniform.
- **Services** – Protection depends on overlap between the EU and US commitments. Computer, consultancy, accounting, engineering and certain financial services may be covered. Transportation, research and development, facilities operation and much of public telecommunications procurement are materially more restricted.
- **Construction** – Qualifying construction services can be covered above the relevant threshold, but only where the procuring entity is itself covered and no sectoral reservation applies. US businesses should not assume that works concessions receive the same treatment as standard construction contracts.

The Proposed Regulation could make these existing coverage gaps commercially more important. Where a US supplier or its tender content is not protected, an EU public buyer may have greater scope to apply European preference measures. US businesses active in regional, municipal, transport, water, airport and infrastructure markets may be particularly exposed to such measures.

An EU address may not offer protection

The Proposed Regulation would assess the bidder separately from what it offers. An EU subsidiary of a UK or US group may qualify as an EU operator, but that does not necessarily mean that all goods, services, works or subcontracted inputs in its tender would receive EU treatment.

Having an EU presence is therefore only part of the picture. Businesses should also consider whether the contract in question is open to UK or US suppliers on protected terms, and where the main elements of their bid originate.

A UK or US bidder may have protected access without an EU subsidiary, while an EU subsidiary may still submit a tender containing non-qualifying content.

Practical implications

Any business considering EU investments, supply-chain restructuring, the establishment of EU subsidiaries and/or consortium bidding arrangements should consider whether those decisions would improve access to strategically important public procurement markets if the Proposed Regulation is adopted.

Further steps that business may take to protect their position include the following:

- **Monitor the legislative process** – Businesses should monitor the legislative process before making changes to their EU operations or supply chains. In the meantime, identify exposed contracts and review the status and origin of bidders, products, services and key subcontractors before submitting a tender.
- **Strengthen quality evidence** – Resilience, security of supply, delivery capability and environmental or social performance may become more influential in bids even where no express origin preference is used.
- **UK businesses** – Make use of the protections under the EU-UK TCA, but do not assume universal coverage. Preserve evidence supporting protected status and be ready to challenge EU preference conditions if they prejudice your participation.
- **US businesses** – Prioritise a review of coverage gaps involving sub-central authorities, utilities, transport and infrastructure. Consider whether bid structure, consortium composition or supply chain choices could improve the proportion of EU or otherwise covered content in a bid, and do not rely on EU presence alone.

Outlook

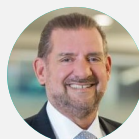
The Proposed Regulation marks a more strategic and protection-conscious phase in EU purchasing policy, but it does not close the internal market to non-EU suppliers. The dividing line is between suppliers and tender content that qualify for EU-equivalent treatment and those that do not. Those that qualify would remain within the preferred group, while those that do not may face greater exposure to European preference measures.

For UK businesses, the combined protections of the WTO GPA and the EU-UK TCA should preserve broader access, subject to contract-specific limits. For US businesses, access remains significant but more fragmented. The businesses most affected may be those selling to regional and local authorities or operating in utilities, transport and other sectors where EU-US coverage is limited.

Contacts



Francesco Liberatore
Partner, London/Brussels/Milan
T +44 20 7655 1505
francesco.liberatore@squirepb.com



George Grammas
Partner, Washington DC
T +1 202 626 6234
george.grammas@squirepb.com



José María Viñals
Partner, Madrid/ Brussels
T +34 91 426 4840
josemaria.vinals@squirepb.com



Karen Harbaugh
Partner, Washington DC
T +1 202 457 6485
karen.harbaugh@squirepb.com



Ludmilla Kasulke
Partner, Washington DC
T +1 202 457 5125
ludmilla.kasulke@squirepb.com



Thomas Delille
Partner, Brussels/ Paris
T +32 2 627 1104
thomas.delille@squirepb.com



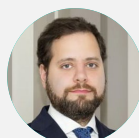
Matthew Kirk
International Affairs Advisor, London
T +44 207 655 1389
matthew.kirk@squirepb.com



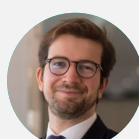
Sam Hare
Director, London
T +44 207 655 1154
sam.hare@squirepb.com



Will Sparks
Director, Brussels/ London
T +322 627 11 11
william.sparks@squirepb.com



Tigran Piruzyan
Senior Associate, Madrid
T +34 91 520 0772
tigran.piruzyan@squirepb.com



Guillermo Giralda Fustes
Associate and Public Policy Advisor
T +322 627 7621
guillermo.giraldafustes@squirepb.com