

# Challenges for the EU Due to its Open and Transparent Internal Market and Public Procurement

## Table of contents

1. Introduction: The European Union's Commitment to an Open and Transparent Internal Market and Public Procurement.....	2
2. Defining the Core Principles and Regulations of the EU's Internal Market.....	2
3. The EU's Public Procurement Directives: Ensuring Openness and Transparency.....	4
4. Documented Challenges and Criticisms of the EU's Open and Transparent Public Procurement Rules.....	5
5. Case Studies Illustrating Challenges Faced by the EU.....	6
6. Trade Regulations and Public Procurement Approaches in Major Non-EU Economic Regions.....	7
7. Comparing and Contrasting the EU's Approach with Non-EU Regions.....	8
8. Potential Advantages and Disadvantages for the EU Arising from its High Level of Transparency and Openness.....	10
9. Impact of Differing Levels of Transparency and Openness on International Competition and Economic Relationships.....	10
10. Conclusion: Navigating the Challenges of an Open and Transparent Internal Market in a Globalized World.....	11
References.....	13

# 1. Introduction: The European Union's Commitment to an Open and Transparent Internal Market and Public Procurement

The European Union (EU) stands as a unique economic and political entity, with its internal market serving as a cornerstone of its integration project. Central to the functioning of this market are the principles of openness and transparency, which aim to foster fair competition, drive economic efficiency, and ensure the free movement of goods, capital, services, and people across its member states.<sup>1</sup> These principles are particularly evident in the EU's comprehensive framework for public procurement, designed to ensure that public funds are spent effectively, without discrimination, and with maximum benefit to citizens.<sup>4</sup>

This report undertakes a comprehensive analysis of the challenges that have arisen for the EU due to its steadfast commitment to an open and transparent internal market, with a specific focus on the implementation of its public procurement directives. While openness and transparency are widely regarded as best practices in promoting good governance and economic growth, their implementation in a globalized world, where other major economic regions may not adhere to the same standards, can present significant hurdles. By examining documented challenges, criticisms, and specific examples, this report aims to shed light on the complexities faced by the EU. Furthermore, it will investigate the approaches to trade regulation and public procurement adopted by key economic players outside the EU, notably the United States and China, noting the varying levels of transparency and openness. Through a comparative analysis, this report will explore the advantages and disadvantages for the EU arising from its relatively high level of transparency and openness, and ultimately synthesize the findings to provide a nuanced understanding of the challenges in the context of how other regions operate.

## 2. Defining the Core Principles and Regulations of the EU's Internal Market

The foundation of the EU's internal market rests upon four fundamental freedoms: the free movement of goods, capital, services, and people.<sup>1</sup> This concept seeks to create a single, seamless economic space where resources can be allocated efficiently, thereby enhancing competition, fostering labor specialization, and enabling economies of scale.<sup>1</sup> The very idea of forging a single market was deeply intertwined with the aspiration to prevent future conflicts in Europe, fostering interdependence and mutual trust among member states.<sup>2</sup>

The **free movement of goods** aims to eliminate all barriers to trade between member states. This is largely achieved through the customs union, which has abolished customs duties and established a common external tariff. Article 30 of the Treaty on the Functioning of the European Union (TFEU) explicitly prohibits customs duties and any charges having an equivalent effect. Additionally, Article 34 TFEU outlaws quantitative restrictions on imports and all measures that could similarly hinder trade, directly or indirectly. The definition of "goods" within this context is remarkably broad, encompassing any product with economic value that can be subject to commercial transactions.<sup>1</sup> While overt measures like customs duties are largely absent, member states sometimes employ more

subtle tactics to favor their domestic markets.<sup>2</sup> It is important to note that exceptions to the free movement of goods are permitted on grounds of public morality, policy, security, health, the protection of national treasures, and industrial and commercial property.<sup>7</sup> Furthermore, the principle acknowledges "mandatory" or "overriding" requirements, such as consumer and environmental protection, as potential justifications for trade restrictions. Ensuring a well-functioning internal market necessitates mutual trust and mutual recognition between member states, meaning that a product deemed compliant in one member state should generally be accepted in others.<sup>2</sup> Approximately half of the trade in goods within the EU is governed by harmonized legislation, establishing common standards, while the remaining portion relies on the principle of mutual recognition.<sup>7</sup>

The **free movement of capital**, as enshrined in Article 63 TFEU, prohibits all restrictions on the movement of capital, both between member states and between member states and third countries.<sup>1</sup> This includes the abolition of capital controls, such as limits on currency purchases or share transactions, and the removal of government approval requirements for foreign direct investment. This freedom was intrinsically linked to the ambition of creating a single currency and a unified monetary policy, aiming to eliminate transaction costs and exchange rate fluctuations.

The **freedom to establish and provide services** grants individuals and companies the right to establish themselves in any member state to conduct economic activities on a stable and continuous basis, as well as the freedom to offer services on a temporary basis in another member state.<sup>1</sup> A distinction exists between establishment, implying a stable and ongoing participation in economic life, and the provision of services, which suggests a more temporary engagement. Restrictions on the freedom of establishment must be non-discriminatory, justified by compelling reasons in the public interest, and applied proportionately. The freedom to provide services applies to a broad spectrum of commercial and professional activities offered for remuneration. The Services Directive further aims to liberalize the services market within the EU.

Finally, the **free movement of people** bestows upon EU citizens the right to move freely between member states for any purpose and to reside in any member state, provided they do not become an undue burden on the social welfare system or public safety.<sup>1</sup> This encompasses the right for workers to seek employment, work, and reside in another member state without facing discrimination based on nationality.<sup>1</sup> This freedom extends to broader rights, including the right to enter, depart, and reside in other member states, to vote in local and European elections, and to enjoy equal treatment with the nationals of the host state, subject to certain conditions. The Citizens' Rights Directive consolidates these entitlements. The Schengen Area significantly enhances this freedom by eliminating systematic border controls between most member states.<sup>1</sup>

The legal framework underpinning the internal market is primarily the Treaty on the Functioning of the European Union (TFEU).<sup>2</sup> The creation of the internal market has been an ongoing process, with the Lisbon Treaty setting the official goal of establishing an internal market that balances economic growth and price stability, fostering a highly competitive social market economy aimed at full employment and social progress.<sup>1</sup> The initial approach to building the internal market involved detailed legislative harmonization, but the Delors Commission pioneered a "new approach" that combined positive and negative integration, relying on minimum rather than exhaustive harmonization.<sup>1</sup> Negative integration involves prohibitions on member states to prevent discriminatory behavior and restrictive practices.<sup>1</sup> The EU aims to enable its citizens to fully exercise these four freedoms, allowing them to study, live, shop, work, and retire in any EU country and enjoy products from across Europe.<sup>3</sup> To achieve this, the EU strives to remove technical, legal, and bureaucratic barriers.<sup>3</sup> The very genesis of the single market was linked to the profound hope of preventing future wars in Europe by fostering interdependence and mutual trust.<sup>2</sup> The EU employs a dual strategy of harmonizing regulations across member states and promoting mutual recognition of national standards to dismantle non-tariff barriers.<sup>8</sup> This approach is guided by the principles of subsidiarity, ensuring that rules are set at the lowest possible level, and proportionality, ensuring that rules are no more detailed than necessary.<sup>8</sup> Despite the significant progress achieved, some barriers persist within the single market, particularly in areas such as fragmented national tax systems,

separate national markets for financial services, energy, and transport, varied e-commerce rules, and complex regulations on the recognition of vocational qualifications.<sup>3</sup> The EU continues to work towards further harmonization in these areas to realize the full potential of the internal market.<sup>3</sup>

## 3. The EU's Public Procurement Directives: Ensuring Openness and Transparency

The European Union has established a comprehensive legal framework to govern public procurement, ensuring that public authorities across its member states award contracts for works, supplies, and services in accordance with principles derived from the Treaties of the European Union.<sup>6</sup> This framework is primarily composed of several key directives, including Directive 2014/24/EU on public procurement, Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, Directive 2014/23/EU on the award of concession contracts, and Directive 2009/81/EC on public procurement in the fields of defense and security.<sup>4</sup>

At the heart of these directives lie several core principles designed to ensure fairness, efficiency, and the effective use of public funds. **Transparency** is paramount, requiring that procurement processes are open and that information regarding tenders and contract awards is readily accessible.<sup>4</sup> The principle of **equality of treatment and non-discrimination** mandates that all economic operators are treated equally and without bias, regardless of their nationality or origin.<sup>4</sup> **Proportionality** dictates that the requirements imposed on bidders should be appropriate and not go beyond what is necessary to achieve the legitimate objectives of the procurement.<sup>4</sup> **Competition** is actively promoted to ensure that public contracts are awarded on the most advantageous terms, encouraging a wide range of suppliers to participate.<sup>5</sup> The overarching goal is to achieve **efficiency** in public spending, securing value for money and contributing to sustainable, inclusive, and competitive economic development.<sup>6</sup> The EU also aims for the **strategic use of procurement**, leveraging public spending to support innovation and broader societal goals.<sup>6</sup>

To ensure transparency, the EU directives mandate several key mechanisms. Contracting authorities are required to publish various notices in the Official Journal of the European Union (OJEU), including Prior Information Notices (PIN) providing advance information of proposed procurements, Contract Notices formally inviting suppliers to tender offers, and Contract Award Notices (CAN) informing the public about the award of a contract, including the price and the reasons for the selection.<sup>5</sup> The Tenders Electronic Daily (TED) database serves as the online platform for these publications, providing broad access to procurement opportunities.<sup>11</sup> The directives emphasize the need to clearly define the subject matter of each contract and the criteria that will govern its award, ensuring that all potential bidders are aware of the requirements.<sup>6</sup> The European Single Procurement Document (ESPD) was introduced to simplify the process for bidders to demonstrate that they meet the exclusion and selection criteria, reducing the administrative burden.<sup>11</sup> Furthermore, the Remedies Directive ensures that there is an effective system in place for bidders to challenge decisions if they believe there has been a breach of the public procurement rules.<sup>10</sup> For transparency purposes and to potentially avoid challenges, contracting authorities can also issue a Voluntary Ex-Ante Transparency Notice (VEAT Notice) before awarding a contract without a fully competitive process.<sup>6</sup> If a public authority decides to abandon or recommence a procurement procedure, it is required to notify the candidates and tenderers of the reasons for this decision as soon as possible.<sup>6</sup> The principle of transparency is seen as a direct consequence of the principle of equal treatment, as both necessitate that the procurement process is open and understandable to all interested parties.<sup>6</sup> Even for tenders that fall below the specific financial thresholds outlined in the directives, the general principles of transparency, equality of treatment, and proportionality must still be respected.<sup>4</sup> These thresholds, which vary depending on the type of contract and the contracting authority, are reviewed and revised by the European Commission every two years to align with the EU's international obligations.<sup>9</sup>

Contracts are to be awarded to the "most economically advantageous tender" (MEAT), which can be determined based on either the lowest price or the best price-quality ratio, allowing for considerations beyond just the cost.<sup>10</sup> The EU is also actively promoting the use of electronic procurement (e-procurement) to further enhance the efficiency and transparency of the process.<sup>12</sup> While the EU aims to increase efficiency in public spending through these rules, there is an ongoing discussion about the balance between an exclusively economic approach and the use of public procurement to promote broader social and economic development, as reflected in the introduction of a binding social clause in the 2014 Public Procurement Directive.<sup>13</sup> Overall, the EU's public procurement framework is designed to ensure that the process is open, fair, and accountable at every stage.<sup>10</sup>

## 4. Documented Challenges and Criticisms of the EU's Open and Transparent Public Procurement Rules

Despite the robust legal framework and the strong emphasis on openness and transparency, the EU's public procurement system has faced a number of challenges and criticisms regarding its implementation and effectiveness.

One significant concern is the **decreasing level of competition** in public procurement procedures across the EU. Over the past decade, the share of single bidding procedures has almost doubled, and a considerable number of contracts are awarded directly, without open competition, in several member states.<sup>11</sup> Furthermore, the level of direct cross-border procurement remains relatively low.<sup>11</sup> The increased complexity of the rules introduced by the 2014 directives may have inadvertently contributed to this decline in competition. These intricate regulations can favor larger companies that possess the resources to navigate them effectively, potentially disadvantaging small and medium-sized enterprises (SMEs).<sup>15</sup> Public authorities, faced with the complexity of the rules, might also exhibit risk-averse behavior, tending to award contracts to well-established and known companies, further limiting competition.<sup>15</sup> The rising prevalence of single-bid contracts, despite the transparency measures in place, suggests potential issues with market access for smaller players or the strategic design of tenders that inadvertently favors certain bidders.

Another major challenge is the **administrative burden and complexity** associated with the EU's public procurement rules, particularly for SMEs. The length of administrative procedures has increased significantly since 2011, and both bidders and contracting authorities generally perceive the process as cumbersome, which can deter businesses from participating.<sup>11</sup> The 2014 reform aimed to simplify these procedures but has largely fallen short of its goals.<sup>14</sup> SMEs often struggle to navigate the intricate requirements effectively, and Directive 2014/24/EU, in particular, has been criticized for being overly complex and administratively burdensome.<sup>16</sup> The failure of the reforms to achieve simplification and improve SME access raises questions about the practicality and effectiveness of the current regulatory framework.

There are also significant **issues with the accuracy, completeness, and monitoring of public procurement data**. The data entered into the Tenders Electronic Daily (TED) database by member states' contracting authorities is not always accurate or complete.<sup>11</sup> National reports often lack detailed information regarding the competitive landscape, and the European Commission's Single Market Scoreboard does not provide a comprehensive or robust view of the state of public procurement in the EU.<sup>11</sup> Furthermore, methodological changes in the monitoring tools used by the Commission are not always transparently disclosed.<sup>11</sup> A fundamental issue also lies in the fact that contract notices and contract award notices are not automatically linked in the systems, making it

difficult to track the final prices of awarded contracts.<sup>17</sup> Missing data in both tender and contract award notices, such as contract values and the crucial links between tenders and their subsequent awards, is a frequent problem.<sup>19</sup> The unreliability of procurement data undermines the very foundation of transparency, hindering effective analysis and informed decision-making by policymakers and stakeholders.

The EU's public procurement rules have also faced criticism for their **limited effectiveness in achieving strategic procurement goals**, such as promoting environmental sustainability and social inclusion. Strategic procurement, which involves considering environmental, social, or innovative aspects alongside price, remains underutilized by most member states.<sup>11</sup> Green public procurement, in particular, encounters barriers such as regulatory fragmentation across EU countries, financial constraints faced by public authorities, and a lack of adequate expertise in green procurement practices.<sup>20</sup> Binding sustainability criteria are not consistently mandated, and a significant proportion of tenders still prioritize the lowest price as the primary award criterion.<sup>21</sup> Legal uncertainty persists regarding whether incorporating social criteria and respect for collective agreements in public procurement can be considered discriminatory measures.<sup>22</sup> The European Commission itself has acknowledged that the voluntary approach to promoting green and social considerations in public procurement has had a limited impact.<sup>22</sup> The frequent focus on short-term budgetary considerations can also impede investments in more sustainable but potentially initially more expensive innovations.<sup>20</sup> Many public authorities lack the necessary expertise and tools, such as Life Cycle Assessment (LCA) and Life Cycle Costing (LCC), to effectively evaluate the environmental and economic impacts of their procurement decisions.<sup>20</sup>

Moreover, the open and transparent nature of public procurement, while intended to reduce corruption, does not eliminate the **potential for increased vulnerability to fraud and corruption**. Public procurement, by its very nature, involves large sums of money and complex processes, making it susceptible to corruption risks.<sup>23</sup> Some evidence suggests that increased rule complexity might even create new avenues for corruption.<sup>15</sup> A lack of comprehensive transparency in practice can also facilitate corrupt practices.<sup>23</sup> The adoption of emergency procurement procedures, as witnessed during the COVID-19 pandemic, can further elevate the risks of corruption due to the weakening of standard procedural controls.<sup>24</sup> The observed rise in single-bid contracts is also associated with a heightened risk of corruption.<sup>15</sup>

Finally, there are ongoing discussions and concerns regarding the appropriate **balance between transparency requirements and the need to protect the legitimate commercial interests of businesses**. While transparency is a fundamental principle, overly broad disclosure requirements could potentially expose sensitive business information, disadvantaging companies and potentially deterring them from participating in public tenders.<sup>26</sup> The implementation of transparency rules can also vary significantly across EU member states, reflecting differing national legal traditions and priorities.<sup>26</sup>

## 5. Case Studies Illustrating Challenges Faced by the EU

Several case studies and reports highlight the challenges faced by the EU due to its approach to an open and transparent internal market and public procurement. The European Court of Auditors' special reports frequently identify instances of inefficiency and a lack of sufficient competition in the awarding of public contracts across the EU.<sup>11</sup> These audits have pointed to issues such as the increasing length of administrative procedures, which adds to the burden for both contracting authorities and potential bidders.<sup>11</sup> Inaccuracies in the data reported to the TED database, including errors in contract values, further undermine the transparency and reliability of the system.<sup>11</sup>

Concerns have also been raised about EU companies losing out on bids to foreign entities that may not operate under the same level of transparency or face similar regulatory constraints. For instance,

the award of the Pelješac Bridge project in Croatia, a major EU-funded infrastructure project, to a Chinese construction firm sparked debate about the implications of Chinese companies winning significant EU contracts.<sup>31</sup> This case highlighted the soft power dynamics at play and raised questions about whether EU citizens fully recognize the EU's role in such projects.

A particularly pertinent case study is the ongoing EU investigation into China's public procurement practices for medical devices.<sup>32</sup> The European Commission has found evidence suggesting that China is unfairly limiting the access of EU medical device producers to its government contracts through policies that favor domestic products.<sup>35</sup> China's "Buy China" policy, coupled with burdensome approval procedures for imported goods, has been identified as a significant barrier. Interestingly, while not contesting the existence of these measures, the Chinese government pointed out that it has not undertaken international commitments on public procurement.<sup>35</sup> In response, the EU is considering taking measures under its International Procurement Instrument (IPI) to restrict access for Chinese bidders in the EU's own public procurement market, signaling a move towards a more assertive stance on ensuring reciprocity in international trade.<sup>32</sup>

In the construction sector, studies have revealed low levels of participation by international contractors in large public tenders across Europe.<sup>36</sup> Even in countries like Sweden and Denmark, which actively promote international participation, foreign firms are less likely to win bids and less likely to offer the lowest price.<sup>36</sup> A perception of bias against foreign bidders has been reported as a major hurdle in cross-border tendering within the EU.<sup>36</sup>

The healthcare sector in the EU also illustrates the challenges. It faces regulatory fragmentation across member states, significant budget constraints, and the rapid pace of medical innovation, all of which complicate public procurement processes.<sup>37</sup> Balancing sustainability requirements with cost and quality considerations in healthcare procurement presents an ongoing difficulty.<sup>37</sup> Furthermore, ensuring the interoperability of new medical technologies with existing systems adds another layer of complexity to the procurement process.<sup>37</sup>

Global events, such as the COVID-19 pandemic, have also exposed vulnerabilities in the EU's open procurement system. The urgent need for medical supplies led to a surge in public procurement spending and, in some instances, a heightened risk of corruption due to the adoption of emergency procedures, including single-sourcing and direct awards.<sup>24</sup> Case studies from various member states demonstrated different approaches and varying levels of success in mitigating these risks.<sup>24</sup>

## 6. Trade Regulations and Public Procurement Approaches in Major Non-EU Economic Regions

To understand the challenges faced by the EU in the context of its global interactions, it is crucial to examine the trade regulations and public procurement approaches of other major economic regions, particularly the United States and China.

In the **United States**, the **Buy American Act (BAA)** stands as a significant piece of legislation that requires federal agencies to prioritize the purchase of domestic end products and domestic construction materials for contracts exceeding a certain threshold.<sup>38</sup> The BAA also includes price evaluation preferences that favor domestic offers over foreign ones.<sup>40</sup> Furthermore, the "Build America, Buy America" provision extends these local content requirements to all federally funded infrastructure projects.<sup>39</sup> The BAA has demonstrably led to a considerable reduction in government imports by the US.<sup>38</sup> While the US emphasizes openness as a guiding principle in federal acquisition, the BAA and similar policies create a market that is less open to foreign competition compared to the



EU.<sup>38</sup> The US, as a signatory to the WTO Government Procurement Agreement (GPA), does provide access to certain portions of its procurement market to suppliers from other GPA member countries, including the EU.<sup>39</sup> However, the applicability of the BAA to GPA-covered procurement is subject to thresholds and waivers.<sup>39</sup> Notably, the US has at times considered withdrawing from the GPA, indicating a potential inclination towards more protectionist trade policies.<sup>42</sup> In terms of transparency, the US has implemented measures such as the Federal Funding Accountability and Transparency Act of 2006, which mandates the full disclosure of federal funds, and the Data.gov website, aimed at enhancing public access to government-generated data.<sup>45</sup>

**China**, on the other hand, has its own set of regulations governing government procurement, primarily the Government Procurement Law and its Implementing Regulations.<sup>46</sup> These regulations emphasize principles such as transparency, fair competition, and impartiality, and they require the public disclosure of procurement information through designated media channels.<sup>46</sup> The Chinese government often refers to its procurement system as a "Sunshine Project," highlighting its commitment to openness.<sup>46</sup> An electronic procurement system has also been established to enhance efficiency and transparency.<sup>46</sup> However, despite this emphasis on transparency in the legal framework, China also has policies in place that favor domestic products and companies. Article 10 of the Government Procurement Law, for instance, favors domestic medical devices.<sup>35</sup> A draft policy even proposes a 20 percent price advantage for products labeled "made in China" in government procurement.<sup>51</sup> The concept of a "domestic" product plays a significant role in China's procurement practices.<sup>52</sup> While foreign-invested enterprises are theoretically supposed to receive equal treatment, in practice, they often face hurdles.<sup>53</sup> Concerns persist regarding uneven access to information and the transparency of bid criteria.<sup>54</sup> The broad exceptions for national security and state secrets also create uncertainties about the true openness of the market.<sup>53</sup> The EU's recent investigation into China's medical device procurement practices has highlighted concerns about discriminatory measures and a lack of genuine market access for foreign companies.<sup>32</sup> China is currently an observer negotiating its accession to the WTO GPA, which could potentially lead to greater alignment with international standards in the future.<sup>54</sup>

Other relevant economic regions, such as Japan, Canada, and Australia, also have their own approaches to trade and public procurement. Japan is known for its focus on open innovation<sup>56</sup> and is a signatory to the GPA.<sup>57</sup> Canada has a free trade agreement with the EU that includes provisions on public procurement<sup>58</sup>, and it is also a GPA member.<sup>55</sup> Australia is also a GPA signatory<sup>55</sup> and is currently engaged in trade negotiations with the EU that are expected to open up public procurement markets.<sup>58</sup>

## 7. Comparing and Contrasting the EU's Approach with Non-EU Regions

When comparing the EU's approach to public procurement with that of major non-EU regions like the United States and China, several key differences and similarities emerge, particularly in terms of transparency, openness to foreign bidders, and the use of domestic preference policies.

In terms of **levels of transparency and openness**, the EU has established a strong legal framework that emphasizes both principles, primarily through its directives and the use of platforms like the OJEU and TED.<sup>6</sup> While challenges in implementation and data accuracy exist, the de jure commitment to transparency is significant. The United States also emphasizes openness as a guiding principle in its federal acquisition processes. However, the strong presence of "Buy American" policies, which favor domestic producers, creates a market that is considerably less open to foreign competition compared to the EU.<sup>38</sup> China's approach presents a more complex picture. While its legal framework for government procurement promotes transparency and openness, the existence of policies that actively favor domestic products, coupled with concerns about the practical implementation and enforcement of transparency rules, suggests a market that is less open to foreign bidders in reality.<sup>46</sup>



Regarding the **treatment of foreign bidders and the principle of reciprocity**, the EU generally aims for equal treatment of all bidders, regardless of their origin.<sup>10</sup> However, in response to concerns about unfair practices and a lack of reciprocal market access in other countries, the EU has increasingly focused on the principle of reciprocity, as evidenced by the implementation of the International Procurement Instrument (IPI).<sup>10</sup> The US, while providing access to its procurement market for countries that are signatories to the GPA, clearly prioritizes domestic firms through its "Buy American" policies.<sup>39</sup> China's policies, which include price advantages and preferences for domestic products, signal a less open approach to foreign bidders in its public procurement market.<sup>51</sup>

The **WTO Government Procurement Agreement (GPA)** plays a crucial role in shaping international public procurement practices. Both the EU and the United States are active participants in the GPA, committing to non-discriminatory treatment and transparency in procurement for entities covered under the agreement.<sup>42</sup> China is currently in the process of negotiating its accession to the GPA, which could potentially lead to a greater alignment of its practices with international standards in the future.<sup>54</sup> Membership in the GPA is associated with promoting competition and reducing the risk of corruption in public procurement.<sup>60</sup>

Finally, the **use of domestic preference policies** varies significantly among these regions. The EU generally avoids implementing explicit "Buy European" policies, although there have been increasing calls to reconsider this stance in certain strategic sectors.<sup>63</sup> The US has a long-standing tradition of using strong "Buy American" policies to support its domestic industries.<sup>38</sup> China actively employs various policies and measures to favor domestic products and companies in its government procurement market.<sup>51</sup>

Feature	EU	USA	China
<b>Transparency</b>	Strong legal framework, but implementation challenges exist	Emphasized as a principle, various measures in place	Legal framework promotes it, but practical implementation is questioned
<b>Openness to Foreign Bidders</b>	Generally open, increasing focus on reciprocity through IPI	Less open due to "Buy American" policies, access under GPA	Less open due to policies favoring domestic products, negotiating GPA accession
<b>Domestic Preference Policies</b>	Generally avoided, calls for reconsideration in strategic sectors	Strong and long-standing "Buy American" policies	Actively uses policies to favor domestic products and companies
<b>GPA Membership</b>	Signatory	Signatory	Observer negotiating accession
<b>Key Legislation</b>	Directives (2014/24/EU, etc.), TFEU	Buy American Act, Federal Acquisition Regulation, GPA	Government Procurement Law, Implementing Regulations, Tendering and Bidding Law

## 8. Potential Advantages and Disadvantages for the EU Arising from its High Level of Transparency and Openness

The EU's commitment to a high level of transparency and openness in its internal market and public procurement practices brings forth a set of potential advantages and disadvantages in the context of global economic interactions.

Among the **advantages**, the emphasis on transparency and open competition can lead to **enhanced competition** among suppliers, potentially resulting in **better value for money** for taxpayers.<sup>6</sup> Access to a wider pool of suppliers, including those from outside the EU, can also foster **increased innovation** by bringing diverse expertise and solutions to the European market.<sup>56</sup> The principles of openness and transparency align with the **strong rule of law** that the EU strives to uphold, and they can contribute to **reducing corruption** by making procurement processes more visible and accountable.<sup>10</sup> Furthermore, the EU's commitment to these principles projects a **positive international image** as a proponent of open markets and fair trade practices.<sup>31</sup> Applying internal market principles ensures optimal use of economic resources and public funds, which in turn can boost the **competitiveness of European companies** by encouraging them to innovate and offer high-quality products and services at competitive prices.<sup>10</sup>

However, the EU's relatively high level of transparency and openness also presents several potential **disadvantages**. One significant concern is the **vulnerability to unfair competition** from economic regions, such as China, where state subsidies and less stringent transparency requirements might give their companies an advantage.<sup>64</sup> Domestic industries within the EU might face **challenges in competing with global players**, potentially hindering the development of strategic sectors if they are consistently undercut by foreign competitors.<sup>63</sup> Maintaining a high level of transparency and managing complex procurement procedures can also entail **significant administrative costs** for both contracting authorities and businesses.<sup>11</sup> The EU also faces the **risk of foreign companies benefiting from the openness of its market without providing reciprocal access** to EU companies in their own public procurement markets.<sup>58</sup> Additionally, the strong focus on price in open procurement can sometimes lead to a "race to the bottom" in terms of labor standards and product quality if social and environmental considerations are not adequately prioritized.<sup>13</sup> The EU's openness can also create a potential dependence on foreign suppliers in certain critical sectors if domestic production is insufficient or less competitive.<sup>63</sup>

## 9. Impact of Differing Levels of Transparency and Openness on International Competition and Economic Relationships

The differing levels of transparency and openness in trade regulations and public procurement across the globe have a significant impact on international competition and the nature of economic relationships between regions. The EU, recognizing the challenges posed by disparities in market access, has increasingly focused on the principle of **reciprocity**. The implementation of the

**International Procurement Instrument (IPI)** by the EU is a direct response to these concerns, providing a tool to address market access barriers faced by EU companies in third countries.<sup>35</sup> The IPI allows the EU to investigate alleged restrictions in third-country procurement markets and, if consultations fail, to impose proportionate restrictions on the access of companies from those countries to the EU's own procurement market.

The contrasting approaches to public procurement have led to **trade tensions** between major economic powers. The EU has expressed concerns regarding China's practices, which appear to favor domestic suppliers, and has initiated investigations under the IPI.<sup>34</sup> Similarly, the US's "Buy American" policies have been a point of contention with the EU and other trading partners.<sup>64</sup>

**Transparency** plays a vital role in fostering trust and ensuring fair trade practices in the international arena. When procurement processes are open and information is readily available, it can help to reduce corruption and promote a level playing field for all participants.<sup>67</sup> Conversely, a lack of transparency can breed mistrust and create an environment where unfair practices can thrive, potentially hindering the development of strong and mutually beneficial economic relationships.<sup>67</sup> The EU's active use of the IPI signals a more assertive stance in its trade policy, indicating a willingness to employ trade tools to address imbalances and ensure that its commitment to open markets is reciprocated by its trading partners.<sup>35</sup> If reciprocity is not achieved, there is a potential for increased protectionist measures globally, which could have broader implications for international trade and economic growth.<sup>58</sup>

## 10. Conclusion: Navigating the Challenges of an Open and Transparent Internal Market in a Globalized World

In conclusion, the European Union's commitment to an open and transparent internal market, particularly in the realm of public procurement, has yielded numerous benefits but also presents significant challenges in a global landscape where other major economic regions may not adhere to the same principles. The EU faces issues such as decreasing competition, administrative burdens that disproportionately affect SMEs, persistent problems with data accuracy and monitoring, and a limited impact in achieving strategic procurement goals related to environmental and social considerations. Furthermore, the very openness of the EU market can make it vulnerable to unfair competition from less transparent economies that employ protectionist measures and state subsidies. The tension between the EU's commitment to openness and the need to safeguard its domestic industries and strategic interests is a critical balancing act. While transparency is intended to reduce corruption and ensure fair competition, the complexity of the regulatory framework and inconsistencies in its implementation across member states can inadvertently create new challenges. The comparison with the United States, with its entrenched "Buy American" policies, and China, with its state-driven economy and policies favoring domestic products, highlights the different approaches taken by major global players.

To navigate these challenges effectively, the EU needs to continuously evaluate and refine its policies. This includes streamlining procurement procedures to reduce administrative burdens, improving the collection and monitoring of public procurement data to ensure accuracy and completeness, and strengthening the mechanisms for achieving strategic procurement objectives. The EU's increasing focus on reciprocity, as demonstrated by the implementation of the International Procurement Instrument, suggests a recognition of the need to address imbalances in market access and to ensure a level playing field for its companies in the global arena.

Ultimately, the EU must strive for a balanced approach that preserves the fundamental benefits of an open and transparent internal market while proactively addressing the challenges posed by a complex and often protectionist global economic environment. This may necessitate further reforms to its public procurement directives and a strategic use of trade policy tools to ensure that its commitment to openness is met with reciprocity and fairness by its international partners.

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