

21.02.2013

Dear Members of the European Parliament,

In Poland, Directive 2004/18/EC was transposed into national legislation in the Public Procurement Law. This was done in an extremely rigorous, restrictive manner with regard to the rigidity of the procedures involved and the very low thresholds for the application of these rigid procedures. These rules have had an extremely negative effect on the conditions under which scientific research is carried out in Poland. Making purchases in the manner laid down in both the public procurement law and the directive is extremely time-consuming for scientists, causes delays in the delivery of supplies which have to be received in time if the research is to be effective, and is a waste of research funding, as the administration involved in making purchases under this procurement procedure is very expensive, and the same items often end up costing more than they would if they were purchased without a procurement procedure.

This situation has caused an outcry right across Poland's research community, with all of the country's foremost scientific institutions calling for the law to be changed – articles are being written in the press, meetings on science and public procurement are being held, and, most recently, more and more young scientists have been joining a Facebook group entitled 'Public procurement is tying the hands of science'. In the face of this pressure the Polish authorities have taken steps with a view to amending the law so as to meet the needs of science.

Over the last six months, the Polish Academy of Arts and Sciences has organised three meetings bringing together representatives of the scientific community and of the national authorities. The aim of the meetings was to examine the current situation and consider possible solutions. Róża Thun MEP and Frank Engel MEP attended the first of these meetings. As a result of these meetings, a series of specific proposals was drawn up with a view to amending the Polish law to take account of the needs of science. There was also a more general discussion on the flaws within the general concept of the public procurement system that can only be corrected at the level of the directive. The results of this discussion are set out below for your consideration.

As a tool designed to promote transparency in public finances and free trade in goods and services, the directive is not a source of concern to us. Indeed, we see it as sensible and beneficial, including for scientific purchases, when it involves large individual items such as the purchase of an expensive piece of equipment, a costly renovation of a building or the construction of a laboratory. In these circumstances, not only do mandatory tender procedures open up the market and guarantee transparency, but the competition involved might also improve the economic effect of the investment. In this case, the purchaser's outlay in terms of the effort and resources required to carry out the complex tendering procedures is still cost-effective in relation to the value of the investment.

We take completely the opposite view, however, of a tendering requirement that applies not to a single large item, but to a plethora of small purchases, such as hotel rooms, air tickets, computers and office supplies. Under the directive, these must be grouped together as a result of their similarity, treated collectively as individual orders and purchased via a tendering procedure if, over a year, planned purchases in a given category exceed the EU threshold. We

take the view that this requirement is wrong and utterly counterproductive for the following reasons:

- (1) Instead of opening up the market, the requirement favours one kind of market player: large trading and services organisations which have the administrative capacity to prepare tenders and which specialise in providing services for the public sector. This section of the market is inaccessible to retailers who do not have such capabilities, despite the fact that they sell similar products that are often lower in price and higher in quality.
- (2) Instead of promoting transparency, the requirement to group items together generates a temptation to cheat. This is not the case with individual purchases, but it is the case with bulk purchases involving large orders that are grouped together (just compare, for example, the purchase of air tickets individually online and purchases made for an entire institution from one supplier under a tendering procedure).
- (3) Instead of helping to save public money, the requirement usually results in that money being wasted. This is because the process of planning these diverse, separate purchases a year in advance is extremely time-consuming, as is the process of preparing invitations to tender for such a wide range of goods, given that extraordinarily scrupulous, detailed descriptions of the purchases need to be established to prevent a situation in which low-quality goods are delivered and complaints have to be lodged.
- (4) We take the view that this requirement is a blatant anachronism in this age of online purchasing, which makes it possible for extremely efficient purchases to be made direct from the supplier of the desired item, eliminating the cost of an intermediary. This drawback is particularly glaring in the case of purchases involving hotel rooms or air tickets, which can so easily and efficiently be purchased directly from the hotels or airlines involved. Under the current rules, national authorities are forced to waste resources by paying intermediaries and to waste time explaining the reservation details to them. Science institutions are acutely aware of this waste of public funding, since most of their staff travel is to conferences, and generally that travel is arranged via the conference website.

The points above concern the directive as a whole. Given that the development of scientific research has an important role to play in achieving the priority of improving Europe's economic competitiveness, we call for the shortcomings mentioned above to be examined closely and, as far as possible, corrected so as at the very least to improve the conditions under which Europe's science institutions operate. The review of Directive 2004/18/EC that is currently under way (as mentioned by Frank Engel MEP at a meeting held in Kraków on 8 October 2012) will be an excellent opportunity to improve on the current situation.

Many thanks in advance,

Yours faithfully,

Andrzej Białas

President