

Position Paper

UEAPME¹ demands from the Trilogue on the Public Procurement Directive

General comments

After the vote on the Tarabella Report in the Internal Market Committee of the European Parliament (IMCO) and the “General Approach” agreed by the Competitiveness Council, both in December 2012, the Parliament will decide next week (21 February) to start Trilogue Negotiations about a first reading agreement on the Public Procurement Directive.

With this position paper, UEAPME reacts on the outcome of the vote in the IMCO and the General Approach taken by the Council and presents the main demands from European SMEs for the up-coming negotiations.

The main aims of the original proposal from the European Commission are: (1) simplification of procedures, (2) facilitation of SME participation and (3) better use of public procurement to fulfil other policy objectives. On this proposal, UEAPME published in April 2012 a general positive assessment from an SME point of view and a list with proposals for further improvements ([UEAPME Position Paper²](#)).

Our analyses of the current position of the IMCO and the Competitiveness Council show that in both cases the support measures proposed by the Commission to facilitate SME participation have been cut-down or deleted completely and even worse, in both positions we found amendments that will make it even more difficult for SMEs to participate in public tenders. UEAPME sees here a contradiction to the numerous statements made by all European Institutions about the importance of SMEs for the European economy and the current positions of both institutions, which would not achieve the aim to facilitate the participation of SMEs in public tenders.

Therefore, UEAPME asks both the European Parliament and the Competitiveness Council to rethink their approach in the course of the Trilogue Negotiations and to ensure an effective improvement as regards the participation of SMEs.

Main requests from Europe’s SMEs

1. **Art. 44 – Division into lots – The Commission proposal should be accepted.**

The original proposal from the European Commission is that contracts above 500.000 Euro should be divided into lots by using the “apply or explain” principle. This “apply or explain” principle was deleted by the IMCO. UEAPME demands that this provision, which is one of the core measures to open the market to SMEs, should

¹ UEAPME subscribes to the European Commission’s Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

² See: http://www.ueapme.com/IMG/pdf/120425_PP_UEAPME_final.pdf

be kept and we strongly demand the Parliament to follow the line of the Council, which has accepted the Commission proposal.

2. Art. 43 – Variants – Allowing variants should become the rule, not the exception.

As demanded by UEAPME, variants should be allowed as principle. The Parliament (AM 159) foresees that variants should be allowed along with a basic proposal or it has to be explained why variants are excluded (“apply or explain” principle). UEAPME asks the Council to accept this amendment, as a very efficient instrument to support innovation.

3. Art. 25 and 26 – Time limits – Further cut on time limits will discourage SMEs.

Already the Commission proposal included a significant cut on time limits for the receipt of tenders and the request to participate, i.e. in the case of open tenders from 52 days to 40 days. Already this was criticised by many SMEs. Now the Council wants to have further cuts, i.e. to 35 days (30 days, if documents are provided electronically). UEAPME strongly ask to keep at least the Commission proposal, in order to keep procedures accessible for SMEs, which often have to build-up consortia and to find partners for projects.

4. Art. 11 – Relation between public authorities – Increasing the threshold for private market activities will lead to cross subsidies and unfair competition.

The Commission proposal states that cooperation between public authorities are exempted from this directive, if they do not carry out more than 10% of their activities on the private market. Already this has been sharply criticised by many SMEs, because there is a concrete danger for cross subsidisation of private activities and unfair competition especially for local and regional construction and services markets. Even more worrisome is the fact that both the Council and the Parliament want to increase this threshold to 20%. UEAPME urges both institutions to rethink its approach and ensure fair competition also in these segments of the market.

5. Art. 69 – Abnormally low tenders – A concrete definition of abnormally low tenders is necessary to make the rule operational.

The Commission proposal includes a concrete and practically definition of abnormally low tenders, which is necessary to apply the rule in a transparent way. With amendment 193 the Parliament wants to delete this concrete definition, which would make the application of this rule very arbitrary. Therefore, UEAPME asks the Parliament to follow the Commission and the Council and to keep their definition of abnormally low tenders.

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