



EUROPEAN COMMISSION

Thierry Breton
Member of the Commission

Brussels, 22/03/2024

Mr Mart Vörklaev
Minister of Finance
Republic of Estonia
Madina.Talu@fin.ee
delta@fin.ee

Dear Mr Vörklaev,

Thank you for your letter of 5 December 2023 which draws attention to security risks in relation to public procurement activities. I fully agree with you on the challenges linked to security which the geopolitical situation has increased. I can also refer here to the European Commission's Economic Security strategy.⁽¹⁾ It is indeed important to ensure the proper handling of national security in all activities carried out by public authorities, in particular for outsourced projects.

Accordingly, I fully support the increased efforts and need for enhanced discussion concerning the appropriate handling of national security in the conduct of public procurement. In this context, I would like to raise some observations in order to take the discussion forward.

EU public procurement rules generally offer enough flexibility to serve the needs of public buyers, including handling security concerns. National security is a particularly complex issue that needs to be addressed in all stages of a project. In fact, regardless whether a purchase is covered or is excluded from the public procurement rules due to essential national security concerns, a public authority should for instance verify where the company to whom the contract is awarded is established, what is its ownership or whether other means of possibly influencing their business operations are present, what are the security procedures they apply and what are the possible remedies and sanctions in case of security breach. Such verifications can be included in a public procurement procedure through setting out adequately appropriate requirements in the tender documents, the selection criteria, the technical requirements and the tendering process.

The rules of the defence and security public procurement Directive which you referred to, also apply to purchases having a security purpose that require attribution of a certain security classification or protection. While it is not limited to military related purchases, there are purchases involving security issues which do not fall under its scope.

⁽¹⁾ JOIN/2023/20 final

Where essential national security concerns cannot be guaranteed by less intrusive measures, purchases with security issues can be made without applying the rules of public procurement Directives (Article 15 of Directive 2014/24/EU). However, any derogation from the procurement directives must be justified, limited and proportionate. Therefore, whenever possible, the procurement procedures under the EU Directives should be applied, limiting derogations to what is necessary to protect the essential security interests of a Member State, assessed on a case-by-case basis, e.g. by excluding entities posing threats to those interests.


It is important to note also that offers from third countries or those offers including products originating from third countries may be rejected already based on our existing rules. This is explicitly confirmed in the Commission's "*Guidance on the participation of third country bidders and goods in the EU procurement market*" of 18 November 2019 ⁽²⁾. A procurement process for purchases involving security concerns should require, as adequate, information concerning subcontractors, staff, company management and ownership up to the final beneficial owner. This should allow the identification and subsequent rejection of bidders established in the EU that may possibly be related to third countries that are deemed untrustworthy. To further strengthen such process, it may be accompanied by a requirement of a national security clearance toward listed persons and entities.

As the security aspects in public procurement are very important, this item has already been the subject of two presentations and discussions within the Commission's governmental Expert Groups on Public Procurement. These discussions were based on an exchange of information among Member States. We understand that the Belgian Presidency also intends to discuss the matter in the Council Working Party on Public Procurement still in the first half of this year.

For these reasons, I trust that you agree that a potential revision of the public procurement framework should be based on an in-depth analysis of the situation and foreseeable impact.

My services would be happy to have further technical discussions on these issues.

Yours sincerely,



Thierry Breton

Contact:

SALONI, Jan, tel. +32 229-80365, Jan.SALONI@ec.europa.eu

⁽²⁾ Communication from the Commission (C(2019) 5494 final), https://commission.europa.eu/funding-tenders/tools-public-buyers/public-procurement-and-non-eu-participation_en