



EUROPSKI PARLAMENT

2009 - 2014

Dokument s plenarne sjednice

A7-0339/2013

21.10.2013

PREPORUKA

o nacrtu Odluke Vijeća o sklapanju Protokola o izmjeni Sporazuma o javnoj nabavi
(07917/2013 – C7-0180/2013 – 2013/0086(NLE))

Odbor za međunarodnu trgovinu

Izvjestitelj: Helmut Scholz

Oznake postupaka

- * Postupak savjetovanja
- *** Postupak suglasnosti
- ***I Redovni zakonodavni postupak (prvo čitanje)
- ***II Redovni zakonodavni postupak (drugo čitanje)
- ***III Redovni zakonodavni postupak (treće čitanje)

(Navedeni se postupak temelji na pravnoj osnovi predloženoj u nacrtu akta.)

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NACRT ZAKONODAVNE REZOLUCIJE EUROPSKOG PARLAMENTA

o nacrtu Odluke Vijeća o sklapanju Protokola o izmjeni Sporazuma o javnoj nabavi (07917/2013 – C7-0180/2013 – 2013/0086(NLE))

(Suglasnost)

Europski parlament,

- uzimajući u obzir nacrt Odluke Vijeća (07917/2013),
 - uzimajući u obzir Protokol o izmjeni Sporazuma o javnoj nabavi (07918/2013),
 - uzimajući u obzir zahtjev Vijeća za davanje suglasnosti u skladu s člankom 207. stavkom 4. podstavkom 1. u vezi s člankom 218. stavkom 6. podstavkom 2. točkom (a) podtočkom (v) Ugovora o funkcioniranju Europske unije (C7-0180/2013),
 - uzimajući u obzir članak 81. i članak 90. stavak 7. Poslovnika,
 - uzimajući u obzir preporuku Odbora za međunarodnu trgovinu i mišljenje Odbora za razvoj (A7-0339/2013),
1. daje suglasnost za sklapanje Protokola;
 2. nalaže svojem predsjedniku da stajalište Parlamenta proslijedi Vijeću, Komisiji te vladama i parlamentima država članica.

EXPLANATORY STATEMENT

Nature and structure of the Agreement on Government Procurement

The Agreement on Government Procurement (GPA) is a legally binding international agreement on access to government procurement markets, to which some WTO Members are Parties. This plurilateral treaty, which was negotiated in parallel with the Uruguay Round in 1994, entered into force on 1 January 1996. It consists of two parts:

- The core text, which defines the tender rules and guarantees transparency of the procedures and equal treatment of bidders;
- The coverage that is composed of market access annexes, where Parties specify what part of their procurement market they open for international competition (so-called "covered procurement"). When tendering within the domain of covered procurement, Parties cannot discriminate between domestic and other GPA bidders.

Regarding enforcement of its legally binding nature, State-to-state disputes pursuant to the GPA are subject to the WTO dispute settlement system.

The GPA is currently composed of 15 Parties, almost only developed countries: Armenia, Canada, EU (with regard to its 27 Member States), Hong Kong, Iceland, Israel, Japan, Korea, Lichtenstein, Norway, Singapore, Switzerland, Taiwan, and United States of America. 27 Parties have observer status¹, whereby the following observer 10 countries are in the process of negotiating accession: Albania, China, Georgia, Kyrgyz Republic, Moldova, New Zealand, Oman, Panama and Ukraine.

As opposed to bilateral agreements, the GPA established common rules for a larger group of countries. However, the agreement of 1996 was apparently unattractive to the vast majority of WTO members. Change was needed, also in the light of developments in the overall trading environment.

Negotiations

The GPA has contained a built-in review clause, which commits the Parties to negotiate both on the rules and the coverage of the agreement. This provided the background for the launch of negotiations in 1999. In December 2006 GPA Parties reached an understanding on the revision of the core text defining the rules.

For the EU, negotiations have been conducted by the Commission. During the negotiations the Lisbon Treaty entered into force, which requires establishing the consent of the European Parliament and the Council in order to ratify the agreement. However, the procedure does not enable the European Parliament and your rapporteur to amend certain parts of the agreement.

¹ Albania, Argentina, Australia, Bahrain, Cameroon, Chile, China, Colombia, Croatia, Georgia, India, Indonesia, Jordan, Kyrgyz Republic, Malaysia, Moldova, Mongolia, Montenegro, New Zealand, Oman, Panama, Russian Federation, Saudi Arabia, Sri Lanka, Turkey, Ukraine, Viet Nam.

Parliament can only say yes or no to the entire package. Thus Parliament has the task to evaluate whether the advantages of the agreement outweigh possible negative aspects, and whether the agreement trespasses red lines defined in previous decisions of the European Parliament.

The European Parliament has been regularly informed via the INTA Committee in writing on the negotiations.

On 30 March 2012, the GPA Parties reached a political agreement on the overall agreement - including the coverage. This final agreement needs to be ratified by all Parties.

Amending procedure

In order to ratify the amended GPA, the Commission has proposed a Council decision on the conclusion of the Protocol Amending the GPA on the basis of Article 207 (4) on 22 March 2013 subject to the consent of the European Parliament. On 14 June 2013, the Council sent its official referral to the Parliament. The Council needs to adopt the decision, once the Parliament has given its consent. It will then be deposited at the WTO Secretariat. The amended GPA will enter into force, once 2/3 of the Parties have concluded its ratification procedure.

Interest of the EU in improving the scope of the GPA

In many countries the government, and the agencies it controls, are together the biggest purchasers of goods of all kinds, ranging from basic commodities to high-technology equipment.

The EU has a *de-jure* open public procurement market with European contracting authorities giving access to foreign bidders beyond the GPA covered public procurement. Many countries, however, run preferential schemes for domestic suppliers. GPA provides EU companies with legal certainty to access foreign markets.

Furthermore, the EU has set up common rules for tendering of public contracts under its legislation for public procurement in the EU internal market. Part of this legislation is currently being revised¹. The EU has put in place a set of rules, which increase transparency and promote state-of-the art tendering practises such as electronic procurement. Increasing transparency along the lines of EU public procurement rules increases legal certainty and contributes to fight corruption and bribery in third countries.

Ensuring the provision of services of general interest to the population, in particular access to essential services like water, shelter, waste management, health, education and culture, remains one of the most important tasks for every government. Different countries pursue different approaches in balancing this task with the needs for efficient spending of scarce public resources and the striving for best value and quality of services and goods purchased. In many countries, public procurement serves also as an essential tool to stimulate

¹ Negotiators of the Parliament and the Council have reached a political agreement on the final text in July.

employment and economic activity in a region and to promote high standards with regard to environmental protection and decent working conditions. Differences exist also concerning the administrative levels of procuring entities. The difficult task of a Procurement Agreement lies therefore in establishing a fair level playing field while at the same time providing sufficient space for political decisions and diversity. The GPA tries to address this in some explicit provisions addressing environmental protection goals and in the relatively high threshold of 5 million USD for building contracts.

Impact on labour, social and environmental aspects within the EU

The revised GPA does not affect the status of labour, social and environmental law in the EU: The issue to what extent EU contracting authorities might ask for compliance with labour and environmental law of the host Member State is governed by EU public procurement Directives currently under revision. However, the GPA obliges to apply these social and environmental rules to all bidders irrespective of the fact that they are from the EU or from countries being Party to the GPA.

The characteristics of the amended GPA

The revision of the GPA improves the core text, which defines the tender rules, by providing a higher level of clarity and transparency.

As regards the improved rules, the EU sought during the negotiations to re-structure the text of the new GPA, in order to follow the sequential order of a procurement procedure. The new rules contain a number of new features:

- It contains the possibility to use electronic auctions with additional flexibility for Parties' procurement authorities, for example in the form of shorter notice periods when electronic tools are used;
- A free of charge and centralised electronic database will have to be set up by the GAP Parties, which will include procurement notices published by Ministries and other central procurement entities. These obligations are largely inspired by the EU model, the so-called Tender Electronic Daily- TED single data base;
- Similarly to the EU system, the revised rules on selection will ensure that companies that have been found guilty of serious crimes, or other serious offences or professional misconduct can be excluded from the procurement process;
- The revised GPA includes new provisions for developing countries wishing to join the GPA. Developing countries that have started their accession process to the Agreement may benefit from a set of transitional measures: They include: i) price preferences; (ii) offsets; (iii) phased-in addition of specific entities and sectors; and (iv) thresholds that are initially set higher than their permanent level. Provision has also been introduced for delaying the application of any specific obligation contained in the GPA, other than the requirement to provide equivalent treatment to the goods, services and suppliers of all other Parties to the Agreement, for a period of five years following

accession to the Agreement for Least Developed Countries (LDCs) or up to three years for other developing countries. This period can be further extended;

- A reference has been made in the revised rules - along line the EU Directives on Public procurement - on technical specifications allowing contracting authorities to take into account environmental considerations in the technical specifications;
- In addition, the EU has obtained that the current obligations regarding statistical reporting are simplified. This includes a limitation of the number of data to be provided, the possibility to provide estimates, and the introduction of a waiver of the obligations for the Parties (like the EU) who maintain a centralised database.

As regards the enlarged coverage, the package of additions to market access entailed by the conclusion comprises:

- Coverage by the Parties of (at a minimum) more than 200 additional central, local and other government agencies under the Agreement;
- The coverage by Korea, for the first time, of build-operate-transfer contracts;
- Coverage of additional services by almost all of the Parties, for example in the area of telecommunications services;
- Some improvements in the coverage of goods;
- The coverage by all Parties, for the first time, of the full range of construction services, subject to relevant thresholds;
- Downward adjustments in the thresholds applied under the Agreement by a few Parties, notably Israel, Japan, Korea and the Netherlands with respect to Aruba;
- Extended coverage of Private Finance Initiative by Japan;
- The phase out by Israel of its offsets regime (currently at 20% for each procurement awarded to a foreign bidder);
- The removal from the US of Buy America provisions from procurements funded by the Rural Utilities Service.

In general, the EU achieved market opportunities in terms of enlarging the entity coverage (notably by EEA countries, Canada, South Korea, United States, Israel, Taiwan, Hong Kong (China)), in terms of coverage of goods and services, as well as in terms of thresholds of covered goods and services (notably by Japan, Korea and Israel). This amounts to securing the EU roughly 30 billion EURO of additional market access opportunities.

In exchange, EU made offers in terms of extended coverage of entities for EEA countries, Switzerland, Taiwan, Japan and the US. It also offered work concession to Korea, EEA countries and Switzerland, provided a reciprocal partial opening of the railway sector to Japan, and of sub-central level procurement to Canada.

17.9.2013

MIŠLJENJE ODBORA ZA RAZVOJ

upućeno Odboru za međunarodnu trgovinu

o nacrtu Odluke Vijeća o sklapanju Protokola o izmjeni Sporazuma o javnoj nabavi (07917/2013 – C7-0180/2013 – 2013/0086(NLE))

Izvjestitelj za mišljenje: Filip Kaczmarek

KRATKO OBRAZLOŽENJE

Sporazum o javnoj nabavi iz 1994. ima ograničen broj članica, većinom se radi o razvijenim gospodarstvima. Jedan od ciljeva revidiranog Sporazuma o javnoj nabavi jest povećati broj članica. Stoga nudi poticaje za zemlje u razvoju poput mogućnosti privremene primjene viših pragova i postupnog uvođenja subjekata i sektora kako bi se olakšalo otvaranje stranoj konkurenciji.

Međutim, nije jasno je li revidirana klauzula o posebnom i različitom tretmanu za zemlje u razvoju poboljšava pravila koja se trenutno primjenjuju. Novim se tekstom uvodi dodatna zaštita tržišta zemalja u razvoju u prijelaznom razdoblju dok se trenutno o iznimkama može pregovarati bez vremenskog ograničenja. S druge strane, novi tekst ne omogućuje zemljama u razvoju značajno bolji pristup tržištima drugih članica Sporazuma o javnoj nabavi.

Unatoč sveukupnim pozitivnim promjenama u vezi postupaka javnog nadmetanja i transparentnosti, ne može se očekivati da će zemlje potpisati ovaj Sporazum ako se ne pokaže da će korist koju će time dobiti biti veća od troškova, poput onih administrativnih povezanih s postupkom pristupanja Sporazumu te socijalnih i gospodarskih troškova nastalih zbog gubitaka tržišta nabava za domaća trgovačka društva te ako se ne stvore sigurnosne mreže potrebne za svođenje učinaka takvih gubitaka na minimum.

Dugoročni učinci liberalizacije nacionalnih tržišta nabava i time dobiveni povećani pristup tržištu su pozitivni, unatoč gore spomenutim nedostacima revidiranog teksta.

Odbor za razvoj poziva Odbor za međunarodnu trgovinu da kao nadležni odbor Parlamentu

predloži da da suglasnost.

REZULTAT KONAČNOG GLASOVANJA U ODBORU

Datum usvajanja	17.9.2013.
Rezultat konačnog glasanja	+: 17 -: 6 0: 0
Zastupnici nazočni na konačnom glasanju	Thijs Berman, Michael Cashman, Ricardo Cortés Lastra, Corina Crețu, Leonidas Donskis, Mikael Gustafsson, Filip Kaczmarek, Miguel Angel Martínez Martínez, Gay Mitchell, Norbert Neuser, Maurice Ponga, Jean Roatta, Birgit Schnieber-Jastram, Michèle Striffler, Keith Taylor, Patrice Tirolien, Ivo Vajgl
Zamjenici nazočni na konačnom glasanju	Philippe Boulland, Edvard Kožušník, Isabella Lövin, Judith Sargentini
Zamjenici nazočni na konačnom glasanju prema čl. 187. st. 2.	Emma McClarkin, Elżbieta Katarzyna Łukacijewska

REZULTAT KONAČNOG GLASOVANJA U ODBORU

Datum usvajanja	14.10.2013
Rezultat konačnog glasanja	+: 21 -: 0 0: 2
Zastupnici nazočni na konačnom glasanju	Laima Liucija Andrikienė, Maria Badia i Cutchet, Nora Berra, Daniel Caspary, María Auxiliadora Correa Zamora, Andrea Cozzolino, George Sabin Cutaş, Marielle de Sarnez, Christofer Fjellner, Yannick Jadot, Franziska Keller, Bernd Lange, Vital Moreira, Paul Murphy, Niccolò Rinaldi, Peter Šťastný, Robert Sturdy, Jan Zahradil
Zamjenici nazočni na konačnom glasanju	Jarosław Leszek Wałęsa
Zamjenici nazočni na konačnom glasanju prema čl. 187. st. 2.	Elisabeth Jeggle, Krzysztof Lisek, Iosif Matula, Catherine Stihler