Opinion of the European Economic and Social Committee on International public procurement

(2008/C 224/06)

On 25 October 2007, Mr Jean-Pierre Jouyet, the French Minister of State with responsibility for European affairs, asked the European Economic and Social Committee, on behalf of the forthcoming French presidency of the Council, to draw up an opinion on:

International public procurement.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 6 May 2008. The rapporteur was Mr Malosse.

At its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 70 votes, with 2 abstentions.

1. Recommendations

1.1 The EESC urges the European Commission to be steadfast in pursuing its goals of further opening public procurement and to ensure that the principles of transparency, equal treatment, and social and ecological responsibility are respected.

1.2 In connection with the renegotiation of the GPA, the EESC recommends that the Commission oppose vigorously the protectionist practices of some of the countries party to the agreement.

1.3 With regard to public development aid, the EESC is in favour of a gradual and reciprocal abandonment of ‘tied-aid’ systems and considers that the key criteria for this must be effectiveness and transparency.

1.4 At European Union level, the EESC is in favour of more transparency and modern methods of procurement and notification of tenders. In this regard, the EESC will be opposed to any moves to raise the thresholds of the European directives which provide safeguards for transparency. The EESC supports the European Commission’s communication, which aims to increase the transparency of public procurement procedures that fall beneath the thresholds of the directives.

1.5 The EESC is against the introduction of a quota system for SMEs like that applied under the US Small Business Act, but in favour of a ‘roadmap’ for European SMEs, particularly VSEs (very small enterprises), complete with concrete initiatives, a timetable and a multi-annual budget and channelled towards encouraging innovation and business start-ups, particularly in the key areas of energy efficiency and protection of the environment.

1.6 The roadmap could be made more effective and implemented more easily if it is accompanied by information systems that draw on SMEs as natural relay points, together with genuinely transparent and equitable consultation mechanisms and simple European legal instruments.

1.7 These concrete initiatives and arrangements should, wherever possible, apply the principle of ‘putting the smallest first’, for example, by establishing one-stop procedures for cutting red tape. This would enable administrative and technical procedures to be designed with the scale and characteristics of small businesses in mind and would also meet the objective of reducing the burden that falls on them.

2. Presentation

2.1 On behalf of the forthcoming French presidency of the European Union, the French Minister of State with responsibility for European Affairs sent an official letter asking the EESC to draw up an exploratory opinion on International public procurement.

2.1.1 The request refers explicitly to the ongoing negotiations on the revision of the WTO (World Trade Organisation) Agreement on Government Procurement (GPA), involving twelve countries (1) plus the European Union (there are also eighteen countries with observer status).

2.1.2 In this regard, in the autumn of 2007, the French government was concerned that the European Union was making an overly generous offer, given that some countries (USA, Korea, Japan) have clauses restricting access to certain of their public procurement markets to their own small and medium-sized enterprises.

2.2 The French position, backed by several Member States, was to ask either for better access to public procurement markets in these countries as part of a revised GPA, or for similar restrictions to be applied in favour of European SMEs in the European Union.

2.3 At present, the GPA concerns procurement thresholds similar to those that exist to meet the requirements set out in the EU’s own internal directives (2), meaning that, in practice, enterprises from the 12 other signatory states of the GPA may take part in any public procurement within the European Union that is above these thresholds.

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(1) Canada, Korea, the United States, Hong Kong (China), Iceland, Israel, Japan, Liechtenstein, Norway, Aruba (The Netherlands), Singapore and Switzerland.

2.4 The EESC has already stated its views on the opening-up of public procurement markets in the European Union. In particular, it has deplored the low level of cross-border involvement in public procurement on the part of enterprises in the European Union (1).

3. At international level

3.1 At international level, the European Union’s markets could be classed as particularly open to international competition. The same goes for a growing number of procurement contracts funded by the European Union under development aid (the EU is the world’s foremost donor). However, the EESC regrets the existence of a practice in the Member States whereby the obtention of development aid is made dependent on the award of contracts to businesses from the donor country (2).

3.2 As well as making widespread use of ‘tied aid’ programmes, some of our partners have also introduced protection systems of various kinds (such as the ‘Buy American’ scheme and ‘Small Business Act’ in the USA). The opening of international public procurement markets must be seen as advantageous for the EU, in view of the fact that many of its enterprises, including SMEs, are global leaders in the fields of construction, public works, alternative energies and environmental protection.

3.3 As well as measures to support SMEs, America’s ‘Small Business Act’ also includes a provision which reserves 25% of federal public procurement for American SMEs.

3.4 With regard to the renegotiation of the Government Procurement Agreement (GPA), the EESC considers that, although the principle of reciprocity needs to be heightened, the EU should not adopt protectionist measures similar to those of our competitors, since this would not help achieve the overall objective the EU must have of opening markets.

3.5 Moreover, this objective must apply not only to the signatories to the GPA but also to other countries where procurement procedures are particularly lacking in transparency and generally closed to European enterprises.

3.6 The idea of temporarily excluding from the GPA public procurement financed from European funding for countries that maintain national protection schemes is an interesting one which the EESC has already put forward in previous opinions.

3.7 The EESC emphasises that the issues of concern for the environment and the minimum social standards established by the ILO Conventions (and collective inter-sectoral, sectoral and company agreements concluded by the social partners and applicable in the countries concerned) must be taken into account in the negotiations, particularly with respect to bilateral agreements with countries which have not ratified the Kyoto Protocol or the ILO Conventions, or which fail to apply them or apply them poorly.

4. In the European Union

4.1 Drawing on the example of America, the European Commission has announced that it may introduce a European version of the ‘Small Business Act’, which, without offering specific public procurement quotas for SMEs as in the USA, would nonetheless give SMEs easier access to public contracts and, more generally, would propose concrete measures to support SMEs.

4.2 The question of introducing quotas for SMEs is irrelevant in Europe, since (according to 2005 sources) enterprises categorised as SMEs under EU terminology currently account for around 42% (according to the European Commission) of the total volume of public procurement in the EU (3).

4.3 Within the EU, the European dimension of public procurement needs to be developed in order to make the most effective use of public money. Despite a significant increase in contracts awarded to enterprises from other EU countries, businesses are complaining of a lack of transparency and a shortage of appropriate information that would enable them to take part in cross-border procurement markets, particularly those that fall beneath the thresholds for the application of the European directives requiring European-wide publication. Entrepreneurs are also complaining that the European directives are made more difficult by the transposition procedures, which are not always transparent (deadlines and delays) and often result in the accretion of additional layers of specific national regulations. The Committee recognises the need for regulations on public procurement, but calls for more transparency and legal certainty.

4.4 The EESC believes that thresholds, beyond which principles of openness, transparency and notification apply, are the best possible way of ensuring that economic players, particularly very small enterprises (VSEs), can take part in public procurement procedures. Within the EU itself, it is the procurement procedures situated below these thresholds, where the principles of equal treatment and non-discrimination on the grounds of nationality ought nonetheless to apply, that are the subject of numerous complaints by SMEs because of lack of openness.

4.5 Although European entrepreneurs’ federations are not in favour of establishing ‘American-style’ quotas, they do acknowledge the importance of a proactive support policy, particularly with regard to procurement contracts below the thresholds of the EU directives and contracts relating to new technology, energy efficiency or protection of the environment.

4.6 The EESC strongly supports a ‘roadmap’ for European SMEs, setting out a series of specific and binding provisions and accompanied by a timetable and a funding plan. This would build on the twenty years of European policy in support of small enterprises, particularly the European Charter for Small Enterprises adopted at the June 2000 European summit in Santa Maria de Feira and the conclusions of the Stuttgart Conference on Craft and Small Enterprises in April 2007.


4.7 The most appropriate measures might include:

4.7.1 Legislative proposals with a timetable for adoption:

— A code of conduct for public authorities awarding contracts, which would foster an interest in making it possible for the smallest SMEs to take part in public procurement awards as well as encouraging good practices with regard to the simplification and dematerialisation of procedures.

— Single European measures like the Community patent or the European statute for small and medium enterprises (Own-initiative opinion of the European Economic and Social Committee on a ‘European Company Statute for SMEs’, 21 March 2002) which aim to simplify the European Union’s legal framework and develop a ‘European identity’ for enterprises.

— Strengthening the Directive on payment deadlines, as the EESC has urged (6).

4.7.2 Information mechanisms on public procurement with a timetable for their implementation:

— Supporting and developing information and mediation systems on cross-border public procurement and creating links between enterprises by making effective use of the new Enterprise Europe network and by supporting local initiatives from SME associations.

— Supporting pilot projects relating to electronic procurement, enterprise networks, information portals and one-stop-shops on cross-border public procurement, based on existing structures recognised by the economic actors concerned.


The President
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4.7.3 Properly funded initiatives at European level

— Introducing a financial engineering scheme encouraging SMEs to take part in public procurement, in the shape of guarantee and surety funds and credit insurance, and using the European Structural Funds for this purpose.

— Launching European training and pilot programmes for SMEs to encourage energy efficiency and protection of the environment (particularly in the construction sector). This new provision could draw on the unused EU funds which are paid back to the Member States each year.

— Extending the mechanisms for promoting the participation of SMEs to the European Union’s research programmes and initiatives (feasibility subsidies and cooperative research) and encouraging the Member States to put the same kind of mechanisms in place at national level, particularly in sectors linked with new technologies, including the defence and health sectors.

4.7.4 Consultation and mediation procedures:

— Lastly, reviewing the European Commission’s consultation and evaluation procedures, which often fail to take account of the reality of Europe’s actual economic fabric, which is largely composed of SMEs, by consolidating the SME impact assessments, making more systematic use of EESC exploratory opinions and relying more on the organisations representing civil society.

— Strengthening the Enterprise Europe network, which has over 600 contact points across the EU in existing local structures recognised by local economic actors, and the enterprises involved in it, so as to develop a real Europe-wide network for alerting and providing mediation and support for small and medium enterprises.