



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP
AND SMES

Director-General

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Mr Stefano de Marinis
President
European Construction Industry
Federation
Avenue Louise 225
B-1050 Brussels

Dear Mr de Marinis,

Thank you for your letter of 31 August 2018 in which you drew our attention to the absence, in the Polish public procurement system, of a mechanism allowing to deal with unforeseeable costs increases of key construction materials. I was asked to reply to your letter on behalf of Commissioners Violeta Bulc, Corina Crețu and Elżbieta Bienkowska.

As you point out in your letter, EU legislation on public procurement provides instruments for taking into account and distributing the risks associated with possible changes of the market situation. Article 72(1)(a) of Directive 2014/24/EU, applicable in this case, sets out conditions for modifications of contracts and framework agreements without a new procurement procedure. In the line with this provision, modifications must be provided in the initial procurement documents, and shall not alter the overall nature of the contract.

On the basis of the information at its disposal, the Commission considers that the relevant provisions of Directive 2014/24/EU are correctly transposed in the Polish national legislation, allowing to establish contractual safeguards against various threats, such as the market fluctuations that may follow the tendering stage.

Nevertheless, the responsibility for adequately applying these provisions rests with the Member States and their contracting authorities. The quality of tender documents is indeed a fundamental issue for public procurement. In its recent Recommendation on professionalisation of public procurement¹, the Commission stressed the need for an increased professional approach to procurement. The Commission cooperates closely with all Member States on issues linked to the implementation of EU procurement legislation and stands ready to help in Member States' efforts via different actions.

¹ Commission Recommendation on the professionalisation of public procurement: Building an architecture for the professionalisation of public procurement (C(2017) 6654): https://ec.europa.eu/info/policies/public-procurement/support-tools-public-buyers/professionalisation-public-buyers_en

Therefore, you may consider contacting the Polish authorities who are competent for the issue raised by your organisations.

Yours sincerely,



Lowri Evans

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