

[REDACTED] (GROW)

From: [REDACTED] (GROW)
Sent: 25 April 2016 13:14
To: DRZEWOSKA Agnieszka (CAB-BIENKOWSKA); HUSAK Tomasz (CAB-BIENKOWSKA); SCHWIMANN Irmfried (GROW)
Cc: [REDACTED] (GROW); [REDACTED] (GROW); NUNES DE ALMEIDA Joaquim (GROW); [REDACTED] (GROW); [REDACTED] (GROW)
Subject: FW: Flash report - meeting of 22-04 with HU on PAKS
Importance: High

Dear all,
 Please find below the flash report from the meeting on 22 April

[REDACTED]

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Subject: FW: Flash report - meeting of 22-04 with HU on PAKS
Importance: High

On Friday, 22/04/2016 a meeting on the Paks case took place with the Hungarian delegation led by Mr Balázs Sonkodi, Secretary of State

Participants:

HU

- Balázs Sonkodi, Secretary of State
- Olivér Várhelyi, HU Perm Rep, Ambassador
- [REDACTED] Prime Minister's Office
- [REDACTED] HU Perm Rep
- [REDACTED] LLP
- [REDACTED] Law Firm

DG GROW

- Irmfried Schwimann - Deputy Director-General
- [REDACTED] G.2
- [REDACTED] G.2

DG ENER

- [REDACTED] Legal officer ENER

Main points raised:

1. Discussion on the technical aspects
 - The technical exclusivity of PAKS I seems to be acceptable, however, this only constitutes about 10% of the entire project value.
 - The arguments (the existing know-how, easier training, experience, existing legislation, [REDACTED] not being able to make an offer) put forward by HU could be considered mainly of commercial nature, not enough to justify the "sole

provider argument" and could have been included as criteria of a transparent public procurement procedure.

- HU claimed that the safety aspect of the project (experience with the RU technology, RU technology having more than a 100 reactor years) is of a technological nature and justified the award to RU without transparent procedure.

- HU repeated that

- RU was the only one offering "the package deal",
- the regulators have the knowledge on RU technology;
- RU technology is very similar to PAKS I on which HU has 40 years of experience
- [REDACTED] has on the one hand a different technology, [REDACTED] and has delays, thus the only other party capable of offering was not able to, HU does not see that under these circumstances why they should have published a tender;

GROW pointed out that they considered these not to be convincing technical arguments.

- Both HU and GROW concluded that there is a disagreement between us on what could constitute technical reasons that led to the consequence that the contract may be executed only by a particular economic operator, the "sole provider argument".

- HU considered that only nuclear experts could evaluate whether such technical reasons existed in the present case and suggested a meeting of technical experts from both sides.

2. Discussion on the PP Appendix

- GROW asked HU which commitments could be provided that Rosatom would subcontract a substantial share (for instance [REDACTED]) in accordance with EU public procurement rules, and excluding the participation of Rosatom affiliates in the procedures,

- GROW pointed out that the present procurement rules contained in the PP Appendix differed from EU law and that HU had showed willingness in the past to renegotiate it to make it compliant, but saw no commitment proposed by HU in its latest communication.

- HU argued that no such commitment would be needed to reassure the Commission as Rosatom would in practice tender out subcontracts, as they do in other projects.

- HU would have difficulty to commit to anything, as it would jeopardize the fixed price turnkey contract

- GROW pointed out that the compliance of the subcontracting policy with EU law would be appreciated and possible solutions regarding this should be explored by HU

Follow up:

- A meeting next week between nuclear experts on the technical aspects should be arranged.

- HU also proposed a meeting on the commitments the Commission would like to see concerning subcontracting and the procurement appendix. S

Overall summary:

- HU could not put forward real technical arguments, which justify that only Rosatom could execute the contract.
- GROW considers that the current arguments put forward by HU are primarily commercial.
- HU declared it may have difficulty to consider providing any commitments on subcontracting by Rosatom.

Suggested next steps:

- The technical meeting can be held.
- A meeting on the issue of transparent subcontracting ("downstream") should only be envisaged with clear CAB approval, cleared at the appropriate level. It could also only take place if the technical meeting delivers concrete results.
- Showing more openness to bridge our disagreement on the direct award to Rosatom presupposes a clear mandate to negotiate a political solution despite our assessment that the direct award to Rosatom cannot – under current circumstances and on the basis of the information provided by HU so far - be justified under EU public procurement rules.

