(GROW)

From:

(GROW)

Sent:

15 February 2016 09:55

To:

(GROW); EVANS Lowri (GROW);

Cc:

(GROW); DELSAUX Pierre (GROW) (GROW); NUNES DE ALMEIDA Joaquim (GROW);

(GROW)

Subject:

RE: Paks - meeting with HU Sec State

Please see below the more detailed account of the meeting on Paks

On Friday 12/02/2016 a meeting on Paks took place

1. Participants:

For HU

- Balazs Sonkodi
- Olivér Varhélyi

LLP

For DG Grow

Joaquim Nunes de Almeida

2. General:

- HU stressed again the perceived lack of cooperation of DG Grow to enter into a
- HU also continues to claim that before opening the EU-Pilot they never got the message that something was wrong with procurement, which we denied.
- Agreement was reached that difference of perception in this respect would not be fruitful.
- An exchange on the main arguments of HU followed; HU made especially those arguments that had not been made prior to the answer to the LFN.
- Although those arguments are mentioned in the note to CAB (ARES (2016) 680734), they have been substantially clarified and more detailed by HU in the meeting.

3. Arguments exchanged

No direct award:

- Not a new argument is that the IGA and the corresponding "EPC-contract" do not contain a direct award, but provide only for the nomination of a government agency (Rosatom), that then appointed another body (NEAP) to implement the contract. This appointment having followed Russian legal rules would constitute an award in an IGA following "different procedural rules" and therefore be covered by the exemption of art. 22 of Directive 2004/17/EC.
- We made it clear that we did not share this argument.

Contract could only be awarded to one particular economic operator for technical reasons (art. 40.3.c of Directive 2004/17/EC).

- Only Russia would offer turnkey and fixed-price agreements.
- Only Russia could offer the financing conditions required.
- As Russian technology is already used in Paks (and the refurbishment of the old reactors part of the contract), HU was justified in deciding that it would require the same Russian technology for the new reactors. This could only be provided by Russia.
- We stressed that the conditions to invoke this exception have been set very high by the ECJ and that, up to now, we have not seen any sufficient justification for invoking the

exception. Whether other providers could answer the requirements of HU had to be the result of a transparent PP procedure, not of assumptions on possible market responses.

<u>Co-signature of the Fuel Supply Contract by EURATOM implies agreement on the Russian technology and thereby the award to Rosatom</u>

- As the fuel is specific to a particular technology, agreement by EURATOM to the fuel supply contract necessarily implies that the Russian technology has to be used for the building of the reactors. The fuel could not be used in any other reactor.
- We underlined that no proof for this dependency had so far been provided and that
 agreement to the fuel supply, even if the fuel could only be used in Russian technology,
 did not have as a necessary consequence the endorsement of the procedures for the
 procurement of that technology. This would have to be subject to additional thorough
 assessment.

4. Follow-up

As the main arguments put forward by HU were new and substantially alter their previous line, it should be verified asap with ENER whether the co-signature of the fuel supply contract indeed implies what Hungary claims and what influence that might have, according to them, on the procurement of the necessary technology.

Following the contact with ENER, we offered to have a trilaterial GROW/ENER/HU.



European Commission
DG for Internal Market, Industry, Entrepreneurship and SMEs
G.2 Access to procurement markets