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Concessions directive: Time for transposition

Concessionaire companies want 'flexibility' to adapt contracts

By Isabelle Smets • 07 April 2015 Last updated 10:20



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In one year's time, on 18 April 2016, new rules on the award of concession contracts in the EU will enter into force (Directive 2014/23/EU). Motorway concessionaire companies are anticipating this deadline with some apprehension, since the exact conditions under which they will have to operate are still quite vague - while transposition is already underway in most member states. The Commission recognises that now is a crucial moment in this process.

"Transposition is not an easy task," admits Joanna Szychowska, head of the Public Procurement Unit within DG MARKT at the Commission. Her services are stepping up contact with the member states in an attempt to iron out the ambiguities in the new rules, which were adopted just over a year ago and will apply to concessions contracts worth at least €5,186,000. However, "not everyone sees things in the same way," said Kallistratos Dionelis, secretary-general of ASECAP, the European Association of Tolloed Motorway Companies, during a conference organised by the European Economic and Social Committee (EESC) in Brussels on 30 March. These ambiguities must be urgently addressed, he said.

"Rebalancing the risks"

The question of adapting concession contracts that are already in force – mostly (very) long-term contracts – to unpredictable events is particularly sensitive. A study carried out by the consultants PriceWaterhouseCoopers and presented to the EESC emphasises that most concessionaires want contracts to contain clauses allowing for the 'reassessment of risks', for example when there is not as much traffic as expected, or when changes are introduced to environmental or fiscal legislation that affect the expected revenue for concessionaires. The idea of 'risk' is at the heart of concession contracts, and for concessionaires predictability is inextricably linked to this. Christophe Boutin from the French autoroute association (AFSA) says that "if there is no predictability, it will kill the model" – hence the importance of being able to review contracts if the initial conditions change.

And this is where things get complicated. While Szychowska admits that "contracts need to be flexible," she also adds that any amendment to a contract will only be tolerated "under very strict conditions". Pierre Delsaux, deputy director-general of DG MARKT, says that "we must not find ourselves in a situation where

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an amended contract would have attracted other candidates if it had been written in that way from the start". In the EU directive, this concern translates into a measure banning 'substantial amendments' to contracts – but this is the kind of term that can be understood in many different ways. "This kind of definition is very difficult to apply," recognised Delsaux, but "we are engaging in dialogue with member states in order to ensure that the basic principles are transposed".

Szychowska recognises that this transposition period is 'crucial' to set limits for what will be allowed, but she warns that while the Commission understands the demand for flexibility, it does not intend to go beyond what the directive provides. "Some say the rules are too flexible. It is difficult for me to seek more flexibility."

Review of Eurovignette directive

"We want concessions to grow in Europe," said Olivier Onidi, director at DG MOVE, during the ASECAP conference. The construction and maintenance of motorway networks requires enormous investment, and the model has proved its worth within the context of tighter and tighter public budgets. Next year, the EU executive will present a proposal which primarily interests the sector: a review of the Eurovignette directive, which sets out the major principles for tolls for access to road infrastructures. This will be "a fundamental review," said Onidi, which in particular will allow the Commission to further develop the principle of internalising the external costs generated by the transport sector.

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