

EUROPEAN PARLIAMENT



MEMBER OF THE EUROPEAN PARLIAMENT

European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

Brussels, 4th January 2019

Dear Commissioner Vestager,

Sadly, 2019 looks to be even stranger than 2018 in the UK, and we write to raise our concerns with you over the actions of the UK government in the award of three recent contracts for ferry services. We are concerned that proper procurement process has not been followed and that as well as potentially representing an extremely poor deal for the UK taxpayer and their impact on competition and the single market, the contracts could be used as templates for future, bigger, contracts likely to be awarded by the UK government. We would be grateful if your services could investigate.

As you will be aware, the UK Department for Transport (DfT) has awarded three contracts for additional shipping freight capacity direct to providers without running an open EU competitive process.

On 28 December 2018, three contract award notices (CANs) were published in the Official Journal of the European Union (OJEU) announcing the award of contracts to DFDS A/S - Euro 47.29 million, Bretagne Angleterre Irlande SA - Euro 46.62 million and Seaborne Freight (UK) Ltd - Euro 13.82 million. The contracts are for additional freight capacity on roll-on roll-off ferry services between England and France, Belgium, Netherlands and Germany, required "in order to minimise the potential disruption of trade across the Short Straits in the event that the UK leaves the EU without an agreement". In each case, the ferry services are to be operational by 29 March 2019. You will be aware of concerns over the capacity of Seaborne Freight (UK) Ltd to carry out the work, and how such a new business became aware of the process at all.

The justification given by the DfT for direct award of the contracts is that these are cases of "extreme urgency". The CANs state, using the wording drawn from the Public Sector Directive 2014/24/EU, that "extreme urgency [was] brought about by events unforeseeable" for the contracting authority and "in accordance with the strict conditions stated in the directive."

We do not see how this can possibly be the case. Under Article 32 of the Directive and the jurisprudence of the European Court of Justice we cannot see how proper process has been followed.

Not only has the risk of disruption to trade been apparent since the start of the brexit process, the sense of crisis, now, has been reached entirely by the actions of the UK government itself. We fear that public money is being wasted in order to provide an illusion of action, but the effect on the ground will be minimal.

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There are other ways within the procurement rules in which these contracts could have been awarded which would have provided a more transparent process and ensured greater scrutiny. However, the DfT has instead published its CANs after the ferry contracts have been entered into. Surely after such a truncated process these contracts are open to challenge, resulting in more costs to public funds? Surely the truncated process has also denied the opportunity to conduct sufficient due diligence into the operators themselves and other potential bidders?

We are also concerned, aside from these contracts, that if this is how the UK proposes to act with public money as we enter extremely uncertain times entirely the fault of the UK government itself, then we risk seeing far greater sums committed to many more contracts of dubious legality and without due diligence. We believe we must ensure, now, that these contracts are properly scrutinised lest they become precedents for how UK Ministers will act.

Obviously, it is something of an understatement to say that things are complicated in the UK at present. But we are all of us under a duty to ensure that public funds are properly spent, and that commercial operators operate within a rule of law. Procurement rules exist to ensure proper value for public funds and proper fair competition. UK Ministers cannot ignore those rules under the pretext of a crisis they themselves created. And as we fear that there is considerably worse to come, we need to scrutinise this now to avoid precedent.

We are at your disposal should you require further information, and look forward to your response. A hard copy of this letter will follow this email via internal post.

Yours,

Catherine Bearder MEP
Richard Corbett MEP
Julie Girling MEP
Mary Honeyball MEP
Jude Kirton-Darling MEP
Molly Scott-Cato MEP
Alyn Smith MEP
Catherine Stihler MEP
Keith Taylor MEP

Letter copied to Commissioner Bienkowska