



EUROPEAN COMMISSION
DIRECTORATE-GENERAL REGIONAL AND URBAN POLICY
DIRECTORATE-GENERAL FOR INTERNAL MARKET, INDUSTRY,
ENTREPRENEURSHIP AND SMEs
Directors-General

Brussels, E2/LT/jd

Subject: Technical assistance contracts concluded between MS and international organisations following the entry into force of the new Directives on public procurement

Dear Ministers,

Technical assistance plays an important role in the implementation of the action plans for the fulfilment of the ex-ante conditionalities as well as in the strengthening of the implementation system at large. In this respect the involvement, as appropriate, of state-of-the-art expertise made available by International Financial Institutions (IFIs) and co-financed by EU funds continues to be of the utmost importance.

Questions have been raised concerning the existence of a legal basis in the new legislation for directly entrusting technical assistance contracts to IFIs and international organisations, at large under the new public procurement Directives¹.

More specifically, in your letter dated 4 May 2016, you sought guidance on the extent to which the exemption from the application of public procurement provided for in article 9 para (2) of Directive 24/2014 applies in respect of the technical assistance provided by the World Bank and the European Investment Bank, namely if the acquisition of such services can be directly awarded.

In the view of the Commission services, the practice of direct contracting for specific and well targeted assignments with International Financial Institutions continues to be possible on the ground that technical assistance contracts with international organisations of which Member States are Members and for the execution of tasks falling within their statutory missions of these international organisations fall outside the scope of application of the Directive.

¹ Directives 2014/23, 24 and 25/EU.

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According to point (5) of Article 2(1) of the Directive 2014/24/EU, public contracts mean contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services.

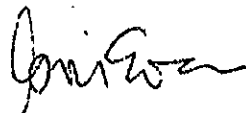
Where a Member State is member of an international organisation and seeks services from that same international organisation which form part of its statutory mission, we take the view that the relationship between the Member State and the international organisation is a relationship with a non-economic operator. It follows that contracts between contracting authorities and international organisations in such a context are not public contracts in the meaning of point (5) of Article 2(1) of Directive 2014/24/EU. The contractual relationship between the Member State and the international organisation therefore falls outside the scope of the Directive.

As a result, contracts can be concluded directly between Romanian central, regional, local and other public authorities, and international organisations, provided that the conditions set out above are satisfied.

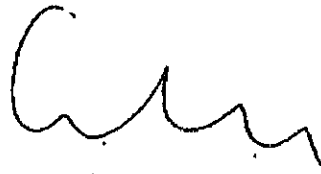
The international organisation at issue will implement the contract on the basis of its conditions that were agreed with the Member State. In the case where the international organisation externalises part of its implementation, it will select firms on the basis of its own procurement rules and procedures.

As far as technical assistance contracts with the European Investment Bank ('EIB') are concerned, it should be noted that since the EIB was created by the Treaty, the relationships between Member States and the EIB are governed by primary law and not by secondary legislation. It follows that access to the EIB's statutory activities cannot be subject to procedural rules and conditions extraneous to the provisions governing the EIB's activities under primary EU law. As a consequence Member States are entitled to directly contract with EIB.

Yours faithfully,



Lowri Evans
Director-General



Walter Deffaa
Director-General

cc: Bogdan Pușcaș,
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