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## PUBLIC PROCUREMENT

### PUBLIC PROCUREMENT ARRANGEMENTS UNDER THE TRADE AND COOPERATION AGREEMENT BETWEEN THE UK AND THE EU SINCE 1 JANUARY 2021

The transitional arrangements under the EU Withdrawal Agreement with the United Kingdom came to an end on 31 December 2020. At the same time the [Trade and Cooperation Agreement](#) signed between the EU and the United Kingdom on 24 December 2020 provisionally entered into force on 1 January 2021. Final application of the Agreement is still subject to the consent of the European Parliament, which is expected to be granted by 30 April 2021 at the latest.

Public Procurement is a key area of the law for the economic systems of the EU and the United Kingdom. EU public procurement law ceased to apply in relation to the United Kingdom when the transitional arrangements came to an end. Although agreement around public procurement seemed uncertain for a long time during the negotiations on the Trade and Cooperation Agreement, the negotiating partners did in the end finally agree on the rules. While these refer in part to the Government Procurement Agreement (GPA) already in place under the WTO, to which the UK acceded with effect from 1 January 2021, more far-reaching rules have also been agreed in some areas. The details are as follows:

#### 1. Scope

The procurement provisions of the Trade and Cooperation Agreement (Part 2, Title VI, Articles PPROC 1 through 19) cover further areas over and above procurement in the sense of the GPA, such as hospitality, the food and drinks industry, telecommunications, real estate services on a fee or contract basis, and educational services. Within this scope, the EU and the United Kingdom will grant each other's companies access to the procurement markets.

#### 2. Procurement procedures

Where possible, procurement procedures will be conducted online. The non-discriminatory use of generally available information and communication technologies will avoid restrictions on access to procurement procedures. The rules governing the submission of tenders and announcements are largely in line with EU public procurement legislation. It is also permitted on the basis of the Agreement to make participation in these procedures dependent on proof of certain experience. However, neither party may make it a mandatory requirement that this experience has to have been gained in its territory. Furthermore, environmental, labour and social considerations are to be taken into account throughout the entire procurement procedure.

#### 3. Publication of calls for tenders

A significant change has been made to the rules for the publication of calls for tenders in the United Kingdom: As of 1 January 2021, calls for tenders by contracting authorities in the United Kingdom have to be conducted centrally online via the new ["Find a Tender" platform](#).

#### 4. Review procedures

The Trade and Cooperation Agreement provides that the parties must ensure that a review procedure is in place to punish any violations of procurement law. The review bodies on both sides (which may also be public authorities)

must be independent and properly qualified to carry out the reviews.

Furthermore, the Agreement provides that interim measures – such as suspension of the procurement procedure or of performance of the contract – may be taken to provide effective legal protection for unsuccessful bidders, similar to that provided for in the EU by the public procurement remedies directives. In cases of this kind, a standstill period can be agreed between the award decision and the conclusion of the contract, as well as periods for submitting challenges. In addition, in the event of procurement violations, there is the possibility of providing for certain corrective action and damages claims.

#### **5. “National treatment”**

Even outside the scope of the types of procurement (see 1. above) that come under the Trade and Co-operation Agreement, it provides that as a general principle measures taken by one party may not result for suppliers of the other party established in its territory through the constitution, acquisition or maintenance of a legal person in treatment less favourable than the party accords its own suppliers.

#### **6. Modifications and rectifications of market access commitments**

The intention is for modifications and rectifications of this kind to be possible. They require prior written notification and – in the case of modifications – a proposal to be made to the other party for appropriate compensatory adjustments (in order to maintain a level of market access commitments comparable to that existing prior to the modification).

In the event that one party objects to a request for modification or rectification with respect to market access commitments, a consultation mechanism is the first step. If the consultation mechanism does not bring about resolution within a time window of 60 days, the parties will seek to settle the matter on the basis of the general dispute settlement provisions of the Trade and Cooperation Agreement.

#### **7. Conclusion**

The signing of the Trade and Cooperation Agreement averted the worst-case scenario of a no-deal Brexit in a public procurement context too. The public procurement arrangements in the bilateral relationship between the United Kingdom and the EU build on the GPA and are usefully supplemented in some areas by more far-reaching agreements (sometimes referred to as the “GPA+ model”). While many provisions are less specific than in EU public procurement law, the parties nevertheless thankfully succeeded in setting out a legal framework that is manageable in practice.

#### EXPERTISE

##### **Public Law**

##### **Public Procurement**

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