DECISIONS

COUNCIL DECISION (EU) 2019/349

of 22 February 2019

establishing the position to be taken on behalf of the European Union within the Committee on Government Procurement of the World Trade Organisation on the accession of the United Kingdom of Great Britain and Northern Ireland to the Revised Agreement on Government Procurement in the context of its withdrawal from the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Union is a Party to the Revised Agreement on Government Procurement ('the Revised GPA'), and its Member States are covered by the Revised GPA pursuant to Union law.

(2) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or, failing that, two years after that notification, namely from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period. The Revised GPA will automatically cease to apply to the United Kingdom from that date.

(3) On 1 June 2018 the United Kingdom, with the support of the Union, applied for accession to the Revised GPA.

(4) According to Article XXII:2 of the Revised GPA, any Member of the WTO may accede to that Agreement on terms to be agreed between that Member and the Parties, with such terms stated in a decision adopted by the Committee on Government Procurement ('the GPA Committee'). Accession is to take place by deposit with the Director-General of the WTO of an instrument of accession that states the terms so agreed. The Revised GPA enters into force for a Member acceding to it on the 30th day following the deposit of its instrument of accession.

(5) The United Kingdom's commitments on government procurement market access coverage are laid down in its final offer, circulated to the Parties to the GPA on 2 October 2018.

(6) The final offer of the United Kingdom is an appropriate one since the United Kingdom's commitments on coverage offer to the Union the maximum coverage the United Kingdom currently has under the Union's GPA schedule, which corresponds to the coverage that the United Kingdom currently has under the Union schedule as a Member State. The Union should provide reciprocal treatment and adapt its schedule in order to provide a corresponding level of access to the United Kingdom's economic operators under the Revised GPA. In addition, clarifications are necessary in the Union schedule in Appendix I to the Revised GPA since the United Kingdom will no longer be covered by that schedule under the Revised GPA. These terms, as set out in the Annex to this Decision, will become part of the terms of accession to the Revised GPA for the United Kingdom and will be reflected in the decision to be adopted by the GPA Committee on the United Kingdom's accession.

(7) It is therefore appropriate to establish the position to be taken on behalf of the Union within the GPA Committee in relation to the accession of the United Kingdom to the Revised GPA.

(8) In the event of a withdrawal agreement between the United Kingdom and the Union providing for a transition period during which Union law would apply to and in the United Kingdom, the Union should notify the other Parties to the GPA that the United Kingdom is to be treated as a Member State for the purposes of the Revised GPA during such transition period. Hence, the United Kingdom would be covered by the Revised GPA until the date of expiry of the agreed transition period. In that case, the United Kingdom should submit an updated set of replies to the Checklist of Issues no later than three months prior to the end of the transition period. The GPA Committee will review the United Kingdom's updated set of replies to the Checklist of Issues and consider an appropriate decision at that time.

(9) While the United Kingdom will not be a third country when the GPA Committee decides on the United Kingdom's accession to the Revised GPA, it is in the interest of the Union to ensure that the Revised GPA enters into force for the United Kingdom as from the day following that on which Union law ceases to apply to and in the United Kingdom. Until its withdrawal from the Union, the United Kingdom remains a Member State enjoying all the rights and bound by all obligations stemming from the Treaties, including compliance with the principle of sincere cooperation.

(10) If Union law continues to apply to and in the United Kingdom, the Commission should be authorised to notify the GPA Committee, on behalf of the Union, within 30 days of the deposit of the United Kingdom's instrument of accession, that the United Kingdom continues to be covered by the Revised GPA pursuant to Union law,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the Committee on Government Procurement ('the GPA Committee') shall be to approve the accession of the United Kingdom to the Revised Agreement on Government Procurement ('the Revised GPA'), subject to the conditions laid down in Article 2 of this Decision and to the terms of accession set out in the Annex to this Decision, insofar as the Union's interests are not negatively affected by the position of other Parties to the GPA.

Article 2

The position to be taken on behalf of the Union pursuant to Article 1 shall be subject to the condition that the decision of the GPA Committee contains provisions ensuring the following:

(1) in the absence of a withdrawal agreement between the United Kingdom and the Union providing for a transition period, the United Kingdom is allowed to deposit its instrument of accession with the Director-General of the WTO provided it does so:

   (a) not earlier than 30 days before the date on which the United Kingdom ceases to be a Member State; and

   (b) within six months of the date of the decision of the GPA Committee, unless the period for submission of the instrument is extended by that Committee;

(2) the deposit of the United Kingdom's instrument of accession is deemed not to have taken place for the purposes of Article XXIV:2 of the 1994 GPA and Article XXII:2 of the Revised GPA if, within 30 days following that deposit, the Union notifies the GPA Committee that the United Kingdom continues to be covered by the Revised GPA pursuant to Union law.

Article 3

In the event that Union law will continue to apply to and in the United Kingdom, the Commission is authorised to notify the GPA Committee, on behalf of the Union, within 30 days of the deposit of the United Kingdom's instrument of accession, that the United Kingdom continues to be covered by the Revised GPA pursuant to Union law.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 22 February 2019.

For the Council
The President
G. CIAMBA

ANNEX

EU TERMS OF UNITED KINGDOM's ACCESSION TO THE GPA IN ITS OWN RIGHT

Upon the entry into force of the Agreement on Government Procurement for the United Kingdom in its own right:

— point 1 of Section 2 ('The Central Government Contracting Authorities of EU Member States') of Annex 1 to Appendix I of the European Union under the revised Agreement shall read as follows:

'1. For the goods, services, suppliers and service providers of Liechtenstein, Switzerland, Iceland, Norway, The Netherlands with respect to Aruba and the United Kingdom, procurement by all central government contracting authorities of EU member States. The list below is indicative'.

— Section 2 of Annex 6 to Appendix I of the European Union under the revised Agreement shall read as follows:

'Works concessions contracts, when awarded by Annex 1 and 2 entities, are included under the national treatment regime for the construction service providers of Iceland, Liechtenstein, Norway, the Netherlands on behalf of Aruba, Switzerland, Montenegro and the United Kingdom, provided their value equals or exceeds 5 000 000 SDR and for the construction service providers of Korea; provided their value equals or exceeds 15 000 000 SDR'.

— Footnote to the title 'The European Union' to Appendix I Annexes of the European Union under the revised Agreement and to the title 'European Union' under the 1994 Agreement shall include the following footnote:

'All the references to the contracting authorities and contracting entities of the United Kingdom currently contained in the European Union's Appendix I Annexes are obsolete'.