

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

PART THREE

SEPARATION PROVISIONS

TITLE VIII

ONGOING PUBLIC PROCUREMENT AND SIMILAR PROCEDURES

Article 75

Definition

For the purposes of this Title, "relevant rules" means the general principles of Union law applicable to the award of public contracts, Directives 2009/81/EC⁽¹⁾, 2014/23/EU⁽²⁾, 2014/24/EU⁽³⁾ and 2014/25/EU⁽⁴⁾ of the European Parliament and of the Council, Regulations (EC) No 2195/2002⁽⁵⁾ and (EC) No 1370/2007⁽⁶⁾ of the European Parliament and of the Council, Article 4 of Council Regulation (EEC) No 3577/92⁽⁷⁾, Articles 11 and 12 of Council Directive 96/67/EC⁽⁸⁾, Articles 16, 17 and 18 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council⁽⁹⁾, Articles 6 and 7 of Regulation (EU) 2017/352 of the European Parliament and of the Council⁽¹⁰⁾, and any other specific provisions of Union law governing public procurement procedures.

Article 76

Rules applicable to ongoing procedures

- 1 The relevant rules shall apply:
 - a without prejudice to point (b), in respect of procedures launched by contracting authorities or contracting entities from the Member States or the United Kingdom under those rules before the end of the transition period and not yet finalised on the last day of the transition period, including procedures using dynamic purchasing systems as well as procedures for which the call for competition takes the form of a prior information notice or periodic indicative notice or a notice on the existence of a qualification system; and
 - b in respect of the procedures referred to in Article 29(2), (3) and (4) of Directive 2009/81/EC, Article 33(2) to (5) of Directive 2014/24/EU and Article 51(2) of Directive 2014/25/EU which relate to the performance of the following framework agreements concluded by contracting authorities or contracting entities from the Member States or the United Kingdom, including the award of contracts based on such framework agreements:
 - (i) framework agreements concluded before the end of the transition period that have neither expired nor been terminated on the last day of the transition period; or

- (ii) framework agreements concluded after the end of the transition period in accordance with a procedure that falls under point (a) of this paragraph.

2 Without prejudice to the application of any restriction in accordance with Union law, the non-discrimination principle shall be complied with by contracting authorities and contracting entities with regard to tenderers or, as applicable, persons who are otherwise entitled to submit applications, from the Member States and the United Kingdom in relation to the procedures referred to in paragraph 1.

3 A procedure referred to in paragraph 1 shall be considered to have been launched when a call for competition or any other invitation to submit applications has been made in accordance with the relevant rules. Where the relevant rules allow for the use of procedures that do not require the use of a call for competition or other invitations to submit applications, the procedure shall be considered to have been launched when the contracting authority or contracting entity contacted economic operators in relation to the specific procedure.

- 4 A procedure referred to in paragraph 1 shall be considered finalised:
- a upon publication of a contract award notice in accordance with the relevant rules or, where those rules do not require the publication of a contract award notice, upon conclusion of the relevant contract; or
 - b upon informing tenderers or persons otherwise entitled to submit applications, as the case may be, of the reasons why the contract was not awarded, if the contracting authority or contracting entity decided not to award a contract.

5 This Article shall not affect Union or United Kingdom rules on customs, the movement of goods, the provision of services, the recognition of professional qualifications or intellectual property.

Article 77

Review procedures

Council Directives 89/665/EEC⁽¹¹⁾ and 92/13/EEC⁽¹²⁾ shall apply in respect of the public procurement procedures referred to in Article 76 of this Agreement which fall within the scope of those Directives.

Article 78

Cooperation

By way of derogation from Article 8 of this Agreement, Article 61(2) of Directive 2014/24/EU shall apply for a period not exceeding 9 months from the end of the transition period in respect of the procedures under that Directive that were launched by contracting authorities from the United Kingdom before the end of the transition period and were not yet finalised on the last day of the transition period.

- (1) Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).
- (2) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).
- (3) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).
- (4) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).
- (5) Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1).
- (6) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1).
- (7) Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).
- (8) Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports (OJ L 272, 25.10.1996, p. 36).
- (9) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293, 31.10.2008, p. 3).
- (10) Regulation (EU) 2017/352 of the European Parliament and of the Council of 15 February 2017 establishing a framework for the provision of port services and common rules on the financial transparency of ports (OJ L 57, 3.3.2017, p. 1).
- (11) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p. 33).
- (12) Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 76, 23.3.1992, p. 14).