



Brussels, 18 January 2018

NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF PUBLIC PROCUREMENT

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that, unless a ratified withdrawal agreement¹ establishes another date, all Union primary and secondary law will cease to apply to the United Kingdom from 30 March 2019, 00:00h (CET) ('the withdrawal date').² The United Kingdom will then become a 'third country'.³

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the considerable uncertainties, in particular concerning the content of a possible withdrawal agreement, economic operators are reminded of legal repercussions, which need to be considered when the United Kingdom becomes a third country.⁴

Subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the withdrawal date the EU rules in the field of public procurement no longer apply to the United Kingdom.⁵ This has in particular the following consequences for public procurement procedures launched by EU Member States authorities as of the withdrawal date:

¹ Negotiations are ongoing with the United Kingdom with a view to reaching a withdrawal agreement.

² Furthermore, in accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

³ A third country is a country not member of the EU.

⁴ For public procurement procedures that are ongoing on the withdrawal date, the EU is trying to agree solutions with the United Kingdom in the withdrawal agreement. The essential principles of the EU's position on on-going Public Procurement Procedures are available here: https://ec.europa.eu/commission/publications/position-paper-going-public-procurement-procedures_en.

⁵ Thus, all guarantees associated with EU Public Procurement Law will cease to apply to economic operators interested or participating in public procurement procedures in the United Kingdom. See https://ec.europa.eu/commission/sites/beta-political/files/public_procurement.pdf for a list of instruments forming part of the EU Public Procurement Law acquis.

- Economic operators from the United Kingdom will have the same status as all other economic operators based in a third country with which the EU does not have any agreement providing for the opening of the EU procurement market.⁶ They shall therefore be subject to the same rules as any third country tenderer.
- Article 85 of Directive 2014/25/EU regulating procurement procedures for the purchase of supplies by entities operating in the water, energy, transport and postal services sectors⁷, sets forth that tenders submitted in the EU may be rejected if the proportion of the products originating in third countries with which the EU has not concluded an agreement ensuring comparable and effective access for EU undertakings to the markets of those third countries, exceeds 50% of the total value of the products constituting the tender. Even where such offers are not rejected, they shall not lead to the award of a contract if there are equivalent offers with less than 50% of the products originating in third countries. Therefore, tenders in this type of EU procurements offering more than 50% of products originating from the United Kingdom and other third countries may be rejected or may not be awarded a contract.
- As clarified by Recital 18 of Directive 2009/81/EC regulating procurement procedures by contracting authorities or entities in the field of defence and security⁸, EU Member States will retain the power to decide whether or not their contracting authorities/entities may allow economic operators from third countries to participate in their defence and security procurement procedures. Economic operators from the United Kingdom may therefore be excluded from bidding for defence and security contracts in the EU.
- Furthermore, Article 22 of Directive 2009/81/EC provides that Member States shall recognise the security clearances which they consider equivalent to those issued in accordance with their national law. Since, as of the withdrawal date, the United Kingdom ceases to be a member of the Union, EU Member States will no longer be under the obligation to recognise security clearances obtained by an economic operator in the United Kingdom, even where they could consider them as equivalent to their national security clearances. This may lead to the exclusion of operators relying on a United Kingdom security clearance in EU defence and security public procurement procedures.

The webpage of the Commission on public procurement (https://ec.europa.eu/growth/single-market/public-procurement_en) provides for general information concerning public procurement procedures in the EU. This page will be updated with further information, where necessary.

European Commission
Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs

⁶ This is without prejudice to any possible future accession of the United Kingdom to the Government Procurement Agreement.

⁷ OJ L 94, 28.3.2014, p. 243.

⁸ OJ L 216, 20.8.2009, p. 76.