

**The second Trade Specialised Committee on Public Procurement under the EU-UK
Trade and Cooperation Agreement**

Brussels, 27 October 2022 & via videoconference

9:00 – 11:00 (BST) / 10.00-12.00 (CEST)

Joint Minutes

The second meeting of the Trade Specialised Committee on Public Procurement under the Trade and Cooperation Agreement between the European Union (EU) and the United Kingdom (UK) took place on 27 October 2022 in Brussels (with some participants connecting via videoconference).

Following opening, the EU and the UK (commonly referred to as the Parties) discussed two agenda points of substance as agreed in the agenda.

Agenda Item 2 - Update on the latest developments in the EU and the United Kingdom

The Parties discussed their latest legislative and policy developments.

The EU made a short presentation of the International Procurement Instrument (IPI)¹ Regulation that entered into force on 29 August 2022. The EU stressed that the primary objective of the IPI is to increase market access opportunities for EU operators in third countries' procurement markets.

The UK sought assurances that application of IPI will not lead to any direct or indirect discrimination of UK operators. The EU underlined that any investigation and eventual IPI measures would be fully in line with the EU's international commitments.

The UK provided an update on legislative work on the Procurement Bill presented to the UK Parliament in May 2022.

The EU looked for assurances that provisions of the Procurement Bill do not lead to any discrimination of EU operators, goods or services, including those established in the UK.

¹ Regulation (EU) 2022/1031 of the European Parliament and of the Council of 23 June 2022 on the access of third-country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R1031>

The UK stressed the Bill is fully compliant with its international commitments on discrimination, including the World Trade Organisation's Agreement on Government Procurement and the UK-EU Trade and Co-operation Agreement (TCA).

Agenda Item 3 - Implementation issues

The Parties discussed issues of concern for their respective stakeholders.

The EU requested an update and the UK's assessment of the burden for companies of the implementation of policy on 'Carbon Reduction Plans in the procurement of major government contracts'.

The UK replied that no challenges to the policy have been made from suppliers and stated that suppliers have welcomed the policy as providing much needed clarity in relation to environmental disclosure and reporting standards.

The EU also requested an update on the implementation of policy on 'Reserving Below Threshold Procurements' as well as confirmation that EU invested companies established in the UK will be treated as UK companies in this regard.

The UK policy informs contracting authorities of their options and applies to procurements with a value below the TCA's financial thresholds for public procurement. The UK stated that EU owned suppliers established in the UK are treated the same as UK owned suppliers in the UK.

The UK, for its part, expressed concern with respect to the procurement of translation services by an EU agency, which excludes UK-based companies, allegedly contrary to the EU's commitments for procurement of translation services under the TCA.

The EU replied that EU agencies are not covered by EU commitments under the GPA and TCA, since with regard to the coverage by the EU in its Annex 1 of the GPA schedules (incorporated into the TCA with no changes) at the level of the European Union, the entities covered are limited to the Council, the Commission and the EEAS.

The UK sought answers to a number of technical questions about one Member State's cyber-certification scheme, building on the outstanding questions shared with the EU in March 2022. The UK set out where it had concerns with the scheme's engagement of TCA and GPA provisions on cross-border data flows, non-discrimination, and access to public contracts. The UK noted that it had raised concerns about compliance with the TCA's services and digital provisions at the Services, Investment & Digital Trade Specialist Committee.

The EU replied that the measures in question clearly fall under the security and general exceptions of the WTO Government Procurement Agreement and the TCA. The EU also

indicated that this Member State would further clarify its policy on cyber certification in the coming weeks.

The UK contended that this Member State recommends preferential treatment to certified operators bidding for contracts that do not handle sensitive data. The EU replied that under this scheme there is no legal obligation to provide preferential treatment to certified operators that do not handle particularly sensitive data and that this aspect could be included in the expected clarification mentioned above.

The UK concluded that it would take stock of the exchange on the scheme but wished to continue the discussion, as the cyber-certification scheme was being reviewed and a number of key aspects of the scheme were still unclear.

Attachments

1. Final agenda
2. List of participants

Attachment 1 – Final agenda

The second Trade Specialised Committee on Public Procurement under the EU-UK Trade and Cooperation Agreement

Brussels, 27 October 2022 & via videoconference

9:00 – 11:00 (BST) / 10.00-12.00 (CEST)

Final Agenda

1.	Opening remarks and adoption of the agenda
2.	Update on the latest developments in the EU and the United Kingdom
3.	Implementation issues
4.	Closing

Attachment 2 - List of participants of the second Trade Specialised Committee on Public Procurement under the EU-UK Trade and Cooperation Agreement

EU Delegation (30 participants)

- EU Co-Chair of the Trade Specialised Committee on Public Procurement
- European Commission Officials from DGs: TRADE, GROW, CNECT, SG
- Delegation of the European Union to the UK Officials
- Representatives of EU Member States

UK Delegation (20 participants)

- UK Co-chair of the Trade Specialised Committee on Public Procurement
- UK Government Officials from the Cabinet Office, FCDO, DCMS
- UK Government Official from UK Mission to the European Union
- Scottish Government Official
- Northern Ireland Executive Official
- Welsh Government Official