



# Extending the Energy Community Treaty to include the rules on public procurement

Vienna, 15 March 2016

# Outline

1. EU public procurement acquis

2. Legal framework for the Western Balkan countries

- EU accession
- Stabilisation and Association Agreements (SAA)
- WTO Government Procurement Agreement

3. Legal framework for Ukraine and Moldova

4. Available options



# EU Public Procurement acquis

# Three new directives on public procurement

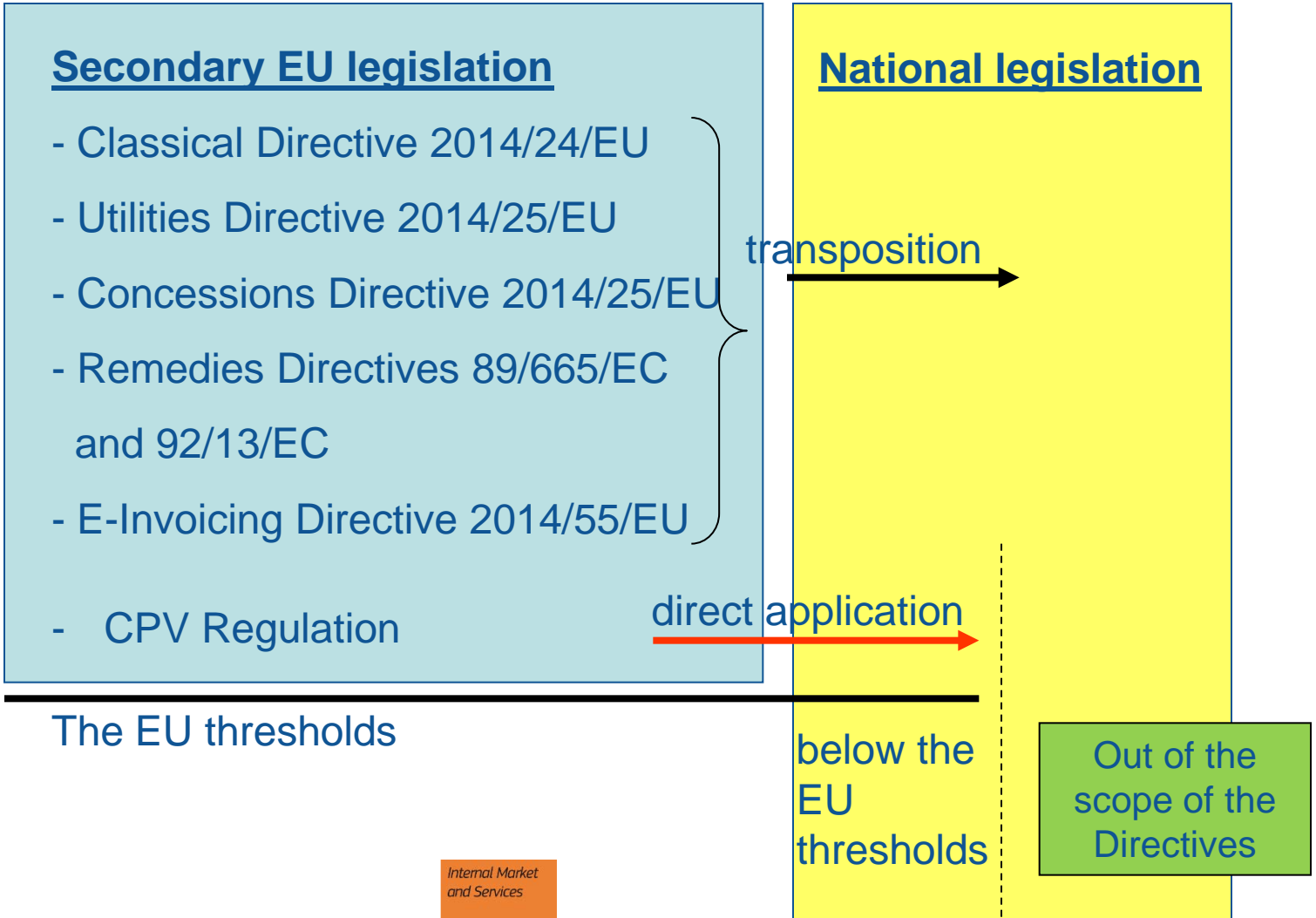
Public  
Contracts  
2014/24/EU

Utilities  
2014/25/EU

Concessions  
2014/23/EU

(e.g. transparency, non-discrimination, equal treatment)

## THE PRINCIPLES OF THE TREATY



## Classical Directive

- Public works, public supplies and public services above thresholds:

	Supplies	Services	Works
Central CAs	EUR 135 000	EUR 135 000	EUR 5 225 000
Other CAs	EUR 209 000	EUR 209 000	EUR 5 225 000

- The directive also provides a framework for electronic procurement, including electronic means of communication, e-submission, dynamic purchasing systems electronic auctions, and electronic catalogues.*

## Utilities Directive

- Procurement for services, supplies or works
  - By utilities (public or private)
  - Utility activity (water, energy, transport, postal)
- *Private entities subject to procurement rules if "operating on the basis of special and exclusive rights"*
- *More flexible regime for utilities*



# New Directive on Concessions

- Works & service concessions  $\geq$  € 5 million
- Classical & utilities sector

## Not:

- Drinking Water (supply or distribution)
- Exclusive rights
- Lotteries
- Public passenger transport services

*No closed list of procedures*

*Basic rules for selection and exclusion criteria*



## Remedies Directives

**Key objective:** ensuring that in the area of public procurement effective and rapid remedies are in place and available at national level

*Pre-contractual and post-contractual remedies*

### Basic requirements under the directives:

- Availability of review procedures
- Independent review body
- Minimum powers





# Legal framework for the Western Balkan countries



# Stabilisation and Association Agreements (SAA)

## Market access

- *mutual access to contract award procedures under treatment no less favourable than that accorded to national companies*

## Legislative approximation

- *Western Balkan countries required to approximate their legislation, including on public procurement, to the EU acquis.*

# Government Procurement Agreement (GPA)

- *A plurilateral agreement (not all WTO Members)*
- *Parties include EU and Montenegro*
- *Aims to mutually open government procurement markets among its parties and establishes rules requiring that open, fair and transparent conditions of competition are ensured in government procurement.*





# Legal framework for Ukraine and the Republic of Moldova

# Association Agreement/DCFTA

- (1) Mutual access to public procurement markets
- (2) Gradual approximation of legislation with EU

To be accompanied by:

- *Enhanced institutional framework*
- *Roadmap/Strategy*
- *Cooperation and technical assistance*

# Indicative Schedule

Phase	Approximation	Market access
1	<ul style="list-style-type: none"> <li>• Institutional framework</li> <li>• Basic standards</li> <li>• Roadmap</li> </ul>	Central government authorities (supplies)
2	<ul style="list-style-type: none"> <li>• Basic elements Classical &amp; Remedies</li> </ul>	State, regional & local authorities and public law bodies (supplies)
3	<ul style="list-style-type: none"> <li>• Basic elements Utilities &amp; Remedies</li> </ul>	All contracting entities (supplies)
4	<ul style="list-style-type: none"> <li>• Other elements Classical</li> </ul>	All contracting authorities (services & works contracts and concessions)
5	<ul style="list-style-type: none"> <li>• Other elements Utilities</li> </ul>	All contracting entities (services & works)



# Government Procurement Agreement (GPA)

**Ukraine and Moldova are about to become GPA parties:**

- *The Republic of Moldova (16 September) and Ukraine (11 November) have been accepted to join.*
- *Accessions to be finalised in first half of 2016*



# Available options



- 1. Incorporation of the entire EU rules on public procurement in the Energy Community Treaty by the means of Ministerial Council decision. Obligations of the Contracting Parties under Energy Community Treaty limited to the energy sector;*
- 2. Incorporation the energy related parts of EU rules on public procurement in the Energy Community Treaty by the means of Ministerial Council decision; or*
- 3. No incorporation of EU rules on public procurement in the Energy Community Treaty, relying on existing international obligations. This option could involve a Recommendation of the Ministerial Council on implementation of the existing obligations in the area of energy.*