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

Vienna, 15 March 2016
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
THE PRINCIPLES OF THE TREATY
(e.g. transparency, non-discrimination, equal treatment)

THE EU thresholds

Secondary EU legislation
- Classical Directive 2014/24/EU
- Utilities Directive 2014/25/EU
- Concessions Directive 2014/25/EU
- Remedies Directives 89/665/EC and 92/13/EC
- E-Invoicing Directive 2014/55/EU
- CPV Regulation

transposition below the EU thresholds

direct application

Out of the scope of the Directives
Classical Directive

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

<table>
<thead>
<tr>
<th>Supplies</th>
<th>Services</th>
<th>Works</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central CAs</td>
<td>EUR 135 000</td>
<td>EUR 135 000</td>
</tr>
<tr>
<td>Other CAs</td>
<td>EUR 209 000</td>
<td>EUR 209 000</td>
</tr>
</tbody>
</table>

- 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 ≥ € 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

<table>
<thead>
<tr>
<th>Phase</th>
<th>Approximation</th>
<th>Market access</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>• Institutional framework&lt;br&gt;• Basic standards&lt;br&gt;• Roadmap</td>
<td>Central government authorities (supplies)</td>
</tr>
<tr>
<td>2</td>
<td>• Basic elements Classical &amp; Remedies</td>
<td>State, regional &amp; local authorities and public law bodies (supplies)</td>
</tr>
<tr>
<td>3</td>
<td>• Basic elements Utilities &amp; Remedies</td>
<td>All contracting entities (supplies)</td>
</tr>
<tr>
<td>4</td>
<td>• Other elements Classical</td>
<td>All contracting authorities (services &amp; works contracts and concessions)</td>
</tr>
<tr>
<td>5</td>
<td>• Other elements Utilities</td>
<td>All contracting entities (services &amp; works)</td>
</tr>
</tbody>
</table>
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.