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REPORT FROM THE COMMISSION

on negotiations for access of Union undertakings to the markets of third countries in fields covered by Directive 2014/25/EU

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1. INTRODUCTION

This report is presented to the Council in accordance with Articles 85[1] and 86[2] of Directive 2014/25/EU (the 'Utilities Directive') on procurement by entities operating in the water, energy, transport and postal services sectors (the 'utilities sectors')[3]. A previous report was issued by the Commission in 2009[4], on the basis of similar reporting obligations under Directive 2004/17/EC. The current report presents the main developments since 2009 on access of Union undertakings to the procurement markets of third countries in the fields covered by the Utilities Directive[5] and on the opening up of service contracts in third countries.

More precisely, the present report takes stock of progress in opening up the access of Union undertakings to the procurement markets of third countries since the accession of new members to the plurilateral World Trade Organisation (WTO) Government Procurement Agreement (GPA)[6]. In addition, the report provides information on the results of bilateral or regional trade negotiations on the access of Union undertakings to the procurement markets of third countries in the utilities sectors. The Commission provides a comprehensive stocktaking of the state of implementation of free trade agreements (FTAs) in its annual implementation reports[7].

The Utilities Directive applies to three different categories of entities (contracting authorities, public undertakings and private undertakings with special or exclusive rights). Hence, private undertakings with special or exclusive rights are also subject to the Utilities Directive. However, the concept of applying procurement rules to private companies active in the utilities sectors is not shared worldwide. As a result, access to purchases by private companies active in the utilities sectors cannot always be negotiated with third countries, and the European Union has made only limited international commitments (GPA or FTAs) in this area.

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[1] Article 85 (5) of Directive 2014/25/EU provides the following: 'By 31 December 2015 and every year thereafter, the Commission shall submit an annual report to the Council, on progress made in multilateral or bilateral negotiations regarding access for Union undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded'.

[2] Article 86 (2) of Directive 2014/25/EU provides the following: 'The Commission shall report to the Council by 18 April 2019, and periodically thereafter, on the opening up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the framework of the World Trade Organisation (WTO)'.

[3] 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.

[4] COM(2009)592 final: Report from the Commission, concerning negotiations regarding access of Community undertakings to the markets of third countries in fields covered by the Directive 2004/17/EC, COM(2009)592 final of 28.10.2009. The Report was prepared in accordance with Articles 58 and 59 of Directive 2004/17/EC.

[5] According to Article 1 (2) of Directive 2014/25/EU 'Procurement within the meaning of this Directive is the acquisition by means of a supply, works or service contract of works, supplies or services by one or more contracting entities from economic operators chosen by those contracting entities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in Articles 8 to 14'.

[6] Unlike the WTO multilateral trade agreements that are binding on all WTO Members, the plurilateral GPA is binding only on those WTO Members that have accepted it. As a result, the GPA does not create either obligations or rights for WTO Members that have not accepted it.

[7] Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on Implementation of Free Trade Agreements 1 January 2016 - 31 December 2016, COM/2017/0654 final; Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on Implementation of Free Trade Agreements 1 January 2017 - 31 December 2017, COM/2018/728 final; Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on implementation of Free Trade Agreements 1 January 2018 - 31 December 2018, COM/2019/455 final; Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on implementation of EU Trade Agreements 1 January 2019 - 31 December 2019, COM/2020/705 final.

2. PLURILATERAL AND MULTILATERAL NEGOTIATIONS

2.1. WTO AGREEMENT ON GOVERNMENT PROCUREMENT (GPA)

The GPA is to date the only legally binding agreement in the WTO on government procurement. It is a plurilateral treaty administered by a Committee on Government Procurement ('the GPA Committee').

Currently, 21 WTO Members are Parties to the GPA, including the European Union and its Member States, which count as one Party. The revised GPA was signed on 30 March 2012 and entered into force on 6 April 2014[8]. The revised GPA provides for further opening up of the public procurement markets of the Parties to the GPA.

2.1.1. Revised GPA

The GPA Parties completed a full revision of both the text of the GPA and the market access commitments under it. The revised GPA provides a higher level of clarity and transparency and guarantees equal footing in procurement procedures to suppliers, supplies and services originating in GPA Parties.

The revised GPA consists of two parts: a) a legal text with rules on principles and procedures, which the procuring entities of the GPA Parties need to apply and b) the coverage schedules of each Party ('Appendix I Annexes'). The coverage schedules of the GPA Parties are divided into seven annexes covering central government entities, sub-central government entities, other entities[9], goods, services, construction services and general notes. These annexes determine the extent to which the procurement of goods and services (including construction services) by the various procuring entities of a given GPA Party is open to participation of economic operators originating in the other GPA Parties. When these procuring entities are covered under a GPA Party's annex, they need to apply the rules stipulated in the revised GPA for the procurement of goods and services.

The commitment to further negotiations is enshrined in the revised GPA. As stipulated in Article XXII:7 of the revised GPA, the GPA Parties have to undertake further negotiations to improve the GPA so that discriminatory measures are progressively reduced and eliminated and to achieve the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity.

The coverage is not uniform, the degree to which the utilities procurement is open to competition from the economic operators of GPA Parties varies from country to country, and the coverage is subject to exclusions and reciprocity-based restrictions.

2.1.2. Overview of current coverage under the revised GPA

The renegotiation of the GPA led to a successful and flexible expansion of Parties' market access commitments, based on the principle of reciprocity. According to the WTO Secretariat, the additions

[8] Article XXIV:9 of the previous version of the GPA (GPA 1994, signed on 15 April 1994 and entered into force on 1 January 1996), allowed Parties to amend the Agreement having regard, inter alia, to the experience gained in its implementation. On 15 December 2011, the Parties to the GPA 1994 reached a political agreement at ministerial level on the outcomes of the respective negotiations. That political agreement was confirmed with the adoption by the GPA Committee on 30 March 2012 of a Decision on the outcomes of the negotiations. By means of that Decision, which includes a Protocol Amending the Agreement on Government Procurement (the 'Protocol'), the Parties to the GPA 1994 authenticated the text of the Protocol and opened it for their acceptance. The Protocol amending the Agreement on Government Procurement was approved by the Council, on behalf of the European Union. (2014/115/EU: Council Decision of 2 December 2013 on the conclusion of the Protocol Amending the Agreement on Government Procurement).

[9] Entities operating in the utilities sectors.

to market access would result in an estimated USD 80 to USD 100 billion in annual gains in market access opportunities for Parties' companies[10].

The additions to market coverage of entities and of goods, services and construction services, which are incorporated in the Parties' coverage schedules to the revised GPA, represent, overall, new market access opportunities for the EU's economic operators.

The EU market opening under the GPA is the most comprehensive. In cases where GPA Parties provide for limited market access, the European Union seeks to ensure reciprocity by introducing reservations from its market coverage so that it reciprocates the limitations in other Parties' market coverages. For example, such reservations are applied to the U.S., Canada, Japan, Korea, Australia and New Zealand. Most of the reservations concern the utilities sectors (i.e. electricity, drinking water, ports and railways) where the coverage of other Parties is more modest than the EU's coverage.

2.1.3. Accession of new members

The European Union has been supporting the accession of new members to the GPA and will continue to do so in order to further open procurement markets in third countries. The participation in the GPA has grown continuously over the last years. This has led to a further expansion of market coverage, also for the procurement of utilities.

Since the previous report, the European Union has been further enlarged, increasing the level of the EU's coverage provided under the GPA. On 1 July 2013, Croatia joined the European Union. As a consequence, the GPA offer for the European Union was extended to include Croatia as of 1 July 2013. The EU's proposed modifications to the EU's appendices were adopted by the Committee on Government Procurement at its formal meeting on 27 June 2013[11].

2.1.3.1. Armenia

Armenia applied for GPA accession in September 2009. Subsequently, Armenia submitted a revised offer in April 2010 and a final offer in September 2010. In August 2011, Armenia deposited its instrument of accession, following a decision of the GPA Committee. The GPA 1994 entered into force for Armenia on 15 September 2011. Armenia also ratified the revised GPA, which entered into force for Armenia on 6 June 2015.

Armenia's commitments under the revised GPA include the procurement of utilities. The thresholds have been set at SDR[12] 400 000 for goods, SDR 400 000 for services and SDR 5 000 000 for construction services.

2.1.3.2. Montenegro

Montenegro applied for GPA accession in October 2013 and submitted its initial offer in November 2013. Montenegro circulated its second revised offer in June 2014 and, subsequently, its final offer in July 2014. In October 2014, the GPA Committee adopted a decision inviting Montenegro to accede to the GPA. Following the deposit of its instrument of accession, the revised GPA entered into force for Montenegro on 15 July 2015.

[10] Report by the Director-General to the Eighth Ministerial Conference of the WTO, WT/MIN(11)/5, 18 November 2011.
[11] GPA/118, dated 27 June 2013.
[12] Special Drawing Rights

Montenegro grants to GPA Parties access to procurements of all utilities operating in the same sectors (meaning the drinking water, electricity, airport, port, urban transport and railways sectors) as provided by the European Union, and it applies the same reciprocity-based restrictions as applied by the European Union *vis-à-vis* the other GPA Parties. The thresholds have been set at SDR 400 000 for goods, SDR 400 000 for services and SDR 5 000 000 for construction services.

2.1.3.3. New Zealand

New Zealand applied for GPA accession in September 2012. New Zealand submitted its final offer in July 2014. In October 2014, the GPA Committee adopted a decision on New Zealand's accession to the revised GPA. Following the deposit of an instrument of accession, the revised GPA entered into force for New Zealand in August 2015.

New Zealand's commitments under the revised GPA include, in its Annex on 'other entities', four state-owned enterprises operating in the utilities sectors of airways, meteorological services, railways, and electricity (Airways Corporation of New Zealand Limited, Meteorological Service of New Zealand Limited, KiwiRail Holdings Limited, and Transpower New Zealand Limited). The thresholds have been set at SDR 400 000 for goods, SDR 400 000 for services and SDR 5 000 000 for construction services.

2.1.3.4. Ukraine

Ukraine applied for GPA accession in December 2012. It submitted its final offer in June 2015. In November 2015, the GPA Committee adopted a decision on Ukraine's accession to the revised GPA. Following the deposit of an instrument of accession, the revised GPA entered into force for Ukraine on 18 May 2016.

Ukraine provides coverage in respect of an extensive number of utilities sectors, and it provides for an indicative list of entities operating in the utilities sectors, following a definition-based approach. Ukraine excludes procurement from affiliated undertakings or joint ventures. The thresholds have been set at SDR 400 000 for goods, SDR 400 000 for services and SDR 5 000 000 for construction services.

2.1.3.5. The Republic of Moldova

In January 2002, the Republic of Moldova applied for GPA accession. The Republic of Moldova submitted its final offer in May 2015. In September 2015, the GPA Committee adopted a decision on Moldova's accession. Following the deposit of its instrument of accession, the revised GPA entered into force for the Republic of Moldova on 14 July 2016.

The Republic of Moldova offers access to procurements by all entities qualified as contracting authorities under national law, operating in utilities sectors such as drinking water, electricity and/or thermal energy (production, transport or distribution), port or other terminal facilities, airport facilities, urban transport and railway transport. An indicative list of entities is included. No reservations are specified. The thresholds have been set at SDR 400 000 for goods, SDR 400 000 for services and SDR 5 000 000 for construction services. However, thresholds for goods and services were subject to a two-year transition period[13].

[13] In the first year following accession, the thresholds for both goods and services were set at SDR 600 000, and in the second year following accession, they were set at SDR 500 000. Since the beginning of the third year following accession, the thresholds have been set at SDR 400 000.

2.1.3.6. Australia

In June 2015, Australia applied for GPA accession. It submitted revised offers in September 2016 and June 2017, and its final offer in March 2018. The negotiations on Australia's accession to the revised GPA have been concluded, and the GPA Committee adopted a decision on Australia's accession to the revised GPA in October 2018. Following the deposit of an instrument of accession, the revised GPA entered into force for Australia on 5 May 2019.

Utilities, railways and other transport-related areas (such as road construction and ports) fall under the responsibilities of Australia's States and Territories. For the entities listed for the Australian Capital Territory, the revised GPA does not cover the procurement of utility services. The thresholds have been set at SDR 355 000 for goods, SDR 355 000 for services and SDR 5 000 000 for construction services. Government business enterprises in Australia that seem to be comparable to EU public undertakings that the European Union offers for procurement if they operate in the utilities sectors of water, electricity, port and airports, urban transport and railways (definition approach) are not covered for the utilities sectors.

2.1.3.7. United Kingdom

During the transition period provided for in the Withdrawal Agreement between the European Union and the United Kingdom[14] (1 February 2020 – 31 December 2020), the United Kingdom continued to be covered by the revised GPA as an EU Member State. Following the expiry of that transition period, the United Kingdom acceded to the revised GPA as a Party in its own right on 1 January 2021. The United Kingdom's final offer under the GPA replicates the terms of the current EU schedule of commitments under the revised GPA in so far as it is applicable to the United Kingdom, including for the utilities sectors.[15]

2.1.3.8. Pending accessions

At present, 11 WTO members are formally in the process of acceding (Republic of Albania; Federative Republic of Brazil; People's Republic of China; Georgia; Hashemite Kingdom of Jordan; Republic of Kazakhstan; Kyrgyz Republic; Republic of North Macedonia; Sultanate of Oman; Russian Federation; Republic of Tajikistan). However, there is currently no activity related to the accession process of Albania, Georgia, Jordan or Oman. Four other WTO members have undertaken commitments in their WTO accession protocols to initiate accession to the revised GPA. They are the Islamic Republic of Afghanistan, Mongolia, the Kingdom of Saudi Arabia and the Republic of Seychelles.

2.2. WTO General Agreement on Trade in Services (GATS)

Article XIII (2) of the GATS provides a rendez-vous clause mandating that 'there shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.'

[14] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 ("Withdrawal Agreement").

[15] In Annex 3 ('Other entities'), the United Kingdom's final offer provides coverage for procuring entities operating in the utilities sectors, replicating the Union schedule. The indicative lists of entities under the United Kingdom's final offer within the GPA remain identical to the lists for the United Kingdom under the Union schedule.

On the basis of this mandate, which refers broadly to the procurement of services by any contracting entity (and thus is not limited to utilities providers), the European Union has made concrete proposals to include an annex on the government procurement of services in the plurilateral Trade in Services Agreement (TiSA) under negotiation. However, the TiSA negotiations, on which the Council and the Parliament have duly been kept informed, have so far not been concluded and are currently suspended.

3. EU AGREEMENTS WITH PROCUREMENT CHAPTERS

3.1. European Economic Area (EEA)

Article 65 and Annex XVI of the EEA Agreement state that the provisions of the Utilities Directive apply in the EFTA countries. Norway, Liechtenstein and Iceland continue to provide Union undertakings access to their utilities procurement, offering a coverage which matches the scope of the Utilities Directive.

The latest enlargement of the EU took place on 1 July 2013 when Croatia joined the European Union. A country which becomes a member of the European Union also has to apply to become party to the EEA Agreement[16]. The Agreement on the Republic of Croatia's participation in the European Economic Area ('EEA Enlargement Agreement') and three related agreements[17] were signed on 11 April 2014. The EEA Enlargement Agreement has been provisionally applied since 12 April 2014.

3.2. Bilateral agreement with Switzerland

The EU and Switzerland have a longstanding relationship in the field of public procurement as Parties to the GPA and to a bilateral agreement on certain aspects of public procurement concluded in 1999. In the GPA framework, the EU-Switzerland relationship was governed by the GPA 1994 until 31 December 2020. In terms of utilities, the GPA 1994 Swiss commitments covered only public authorities and public undertakings in the following sectors: water, electricity, public transport (inner city) systems, airports and domestic ports. On 1 January 2021, Switzerland acceded to the revised GPA[18], under which it will include the coverage of postal services in Annex 3.

The bilateral agreement on procurement[19] complements the commitments of Switzerland and the EU under the GPA. It goes beyond the GPA in that the EU and Switzerland mutually grant access to above-threshold procurement of goods, works and services by both public entities (public authorities and public undertakings) and private utilities operating on the basis of special or exclusive rights in the fields of telecommunication, railway, gas, heat, oil, coal and other solid fuels and private utilities operating on the basis of special or exclusive rights in the fields of electricity, drinking water, maritime or inland ports, airports and urban transports.

[16] Article 128 of the Agreement on the European Economic Area.
[17] Agreement on the participation of the Republic of Croatia in the European Economic Area and three related agreements, OJ L 170, 11.6.2014, p. 5-48.
[18] The GPA 2012 entered into force for Switzerland on 1 January 2021. On the same date, the GPA 2012 replaced the GPA 1994.
[19] Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement, OJ L 114, 30.4.2002, p. 430-467

3.3. Procurement chapters in the Stabilisation and Association Agreements within the EU's enlargement policy

Stabilisation and Association Agreements ('SAAs') are part of the EU stabilisation and association process. Since the launch of this process, the European Union has progressively concluded bilateral SAAs including trade commitments with each of the Western Balkan partners:

- Albania (entered into force in 2009),
- North Macedonia (entered into force in 2004),
- Montenegro (entered into force in 2010),
- Serbia (entered into force in 2013),
- Bosnia and Herzegovina (entered into force in 2015), and
- Kosovo* (entered into force in 2016)[20].

Since the aim of the SAAs is to help the Western Balkan partners concerned to build their capacity to adopt and implement EU law, the reciprocal commitments are usually construed on an asymmetrical basis.

This is also the case for the relevant procurement provisions. When the SAA enters into force, the economic operators of the signatory country, whether established or not in the European Union, shall be granted access to contract award procedures in the European Union pursuant to EU public procurement rules. This applies also to contracts in the utilities sectors once the signatory country has adopted the legislation introducing the EU rules in this area.

EU economic operators established in the signatory country shall be granted access to contract award procedures in the said country under treatment no less favourable than the treatment granted to national companies when the Agreement enters into force.

EU economic operators not established in the signatory country shall be granted access to contract award procedures in the said country under treatment no less favourable than the treatment granted to national companies of the said country, within a given number of years following the entry into force of each Agreement.

3.4. Procurement chapters in agreements within the Neighbourhood policy

3.4.1. Ukraine, Moldova, Georgia

As part of the broader association agreements, Ukraine, Moldova and Georgia have signed agreements with the EU to set up a Deep and Comprehensive Free Trade Area.

Such a Deep and Comprehensive Free Trade Area is linked to the broader process of legislative approximation. The subject of public procurement is of particular importance in this context: the three countries have agreed to implement, within a certain transition period and according to a detailed schedule, nearly all EU legislation on public procurement, as if they were part of the EU. Ultimately, therefore, the three countries' legislation on the procurement of utilities will be based on the standards set by Directive 2014/25/EU.

[20] Albania, the Republic of North Macedonia, Montenegro and Serbia are candidate countries for EU membership. Bosnia and Herzegovina and Kosovo* are potential candidates for EU membership.
* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

3.4.2. Armenia

EU-Armenia bilateral trade relations are regulated by a Comprehensive and Enhanced Partnership Agreement. Negotiations for the agreement were completed in February 2017. It has been provisionally applied since June 2018. The new agreement replaces the 1999 Partnership and Cooperation Agreement.

As Armenia already provided very comprehensive coverage under the GPA, the only additional feature of the bilateral chapter is that it provides clarification on the coverage of works concessions. This applies to all entities covered, including utility providers.

3.5. Other EU agreements with government procurement commitments

3.5.1. Andean Community (Colombia, Peru, Ecuador)

The EU has a comprehensive trade agreement with Colombia and Peru, which has been provisionally applied with Peru since 1 March 2013, and with Colombia since 1 August 2013.

The Protocol of Accession for Ecuador was signed in November 2016 and has been provisionally applied since 1 January 2017.

As for utilities, in the trade agreement's Annex on 'other entities', Peru offered coverage of entities operating in the energy, water, airports and postal services sectors, for procurement above thresholds that are identical for entities operating in the utilities sectors, as offered by the EU.

Colombia listed the procurement entities at central level and revised the coverage of entities at sub-central level (Trade Committee Decision 1/2017) and, in the Annex "other entities", listed a number of independent entities operating in various fields. The EU has expressed concerns as EU suppliers are not granted national treatment in some government procurement contracts at sub-central level, in particular in the utilities field. Technical discussions are ongoing with a view to finding a mutually agreeable solution[21].

In the Annex to its Protocol of Accession, Ecuador offers coverage of procurement by a number of public undertakings operating in the energy, telecommunications, postal services, transport (including railways), water and sewage sectors.

3.5.2. Canada

The new trade agreement between the EU and Canada ('CETA') entered into provisional application on 21 September 2017. The chapter on procurement contains important new market access commitments for both sides.

In the utilities sectors, most state-owned utility providers in Canada operate as 'Crown Corporations', i.e. state-owned enterprises that operate at arm's length of the government. With the commitment of the procurement of most of these Crown Corporations, CETA marks a historic step forward in providing EU bidders a non-discriminatory access to the procurement of Canadian providers of electricity, transport by railway and waterway, local transport, drinking water and gas production,

[21] Report on the Implementation of EU trade agreements of 12 November 2020 and Commission Staff Working Document accompanying the report, available at: https://trade.ec.europa.eu

distribution and supply. An itemised list of the Canadian entities concerned is found in Annexes 19-1 to 19-3 to CETA.

3.5.3. Central America

The EU and Central America signed an association agreement; its trade pillar has been provisionally applied since 1 August 2013 to Honduras, Nicaragua and Panama, since 1 October 2013 to Costa Rica and Salvador and since 1 December 2013 to Guatemala.

In the utilities sectors, the following market access commitments are relevant:

- Costa Rica covered entities in the transport, energy, water and electricity sectors;
- Guatemala covered entities in the telecoms and port sectors;
- Nicaragua covered entities in the postal, energy, water and sewage sectors;
- Panama covered entities in the electricity, transport, water and sewage sectors;
- Honduras covered a port authority.

3.5.4. Iraq

The EU-Iraq Partnership and Cooperation Agreement has been provisionally applied since 1 August 2012. In the utilities sectors, Iraq mirrors the EU's commitments for water, electricity, transport and energy.

3.5.5. Japan

The Economic Partnership Agreement (EPA) between the EU and Japan entered into force on 1 February 2019. For public procurement, the EU has gained better access to contracts put out for tender in Japan by both the central government and regional and local governments. For utilities, the following improvements are notable:

Railways: One of the EU's priorities in the negotiations was to secure greater access to the Japanese market for railway equipment and infrastructure. Japan has in large part agreed to offer this by explicitly granting access to procurements of goods and services for the operational safety of passenger transport. Since 1 February 2020, the so-called Operational Safety Clause in the GPA, while remaining in place, does not apply to EU bidders, as these bidders can rely on the bilateral agreement.

Japan has also agreed to an exchange of letters on railways, which anchors the current cooperation between the two sides on railways to the FTA. This cooperation includes the 'Railway Industrial Dialogue' and the 'Technical Expert Group on Railways'.

As for other utilities, Japan has agreed to open up tenders to EU bidders for electricity distribution (29 entities). In addition, Japan has agreed to grant EU suppliers non-discriminatory access to the procurement markets of 48 cities of around 300 000 inhabitants. These cities represent roughly 15% of the Japanese population. This is important in the context of this report, as most utilities in Japan are run at the municipal level.

3.5.6. Kazakhstan

The Enhanced Partnership and Cooperation Agreement between the EU and Kazakhstan, signed in December 2015, provisionally applied since 1 May 2016 and in force since 1 March 2020, is the first case of a non-preferential trade agreement including a comprehensive chapter on public procurement with mutual market access commitments. These market access commitments do not cover procurement of utilities in the field covered by Directive 2014/25/EU.

3.5.7. South Korea

The EU and Korea have a longstanding relationship in public procurement as Parties to the GPA. The relationship was reconfirmed by incorporating most of the GPA rules as well as their GPA commitments (including their subsequent amendments) in the FTA, which has been provisionally applied since July 2011 (and was formally ratified in December 2015). Since January 2016, the revised GPA has been applicable between the EU and Korea.

In the utilities sectors, Korea has committed to open to EU companies the procurement of entities operating in the energy, water, electricity, local transport and railways sectors, including high speed railways (as from entry into force of the revised GPA).

3.5.8. Singapore

The EU and Singapore signed a trade agreement on 19 October 2018. Following the European Parliament's consent on 13 February 2019, and the Council decision on the conclusion of this agreement on 8 November 2019, the FTA entered into force on 21 November 2019. As part of the trade agreement, the public procurement chapter contains procurement provisions based on the GPA. Singapore and the EU are Parties to the GPA. In the trade agreement, both the EU and Singapore have gone beyond their WTO commitments on government procurement.

As for utilities, Singapore has provided more openings than in the GPA, as it opened up procurement for certain utilities such as energy (the Energy Market Authority) and included additional procuring entities, for example public entities operating in the airports and local transport sectors.

3.5.9. Vietnam

The European Union and Vietnam signed a trade agreement and an investment protection agreement on 30 June 2019. The trade agreement was concluded by the Council on 30 March 2020 and it entered into force on 1 August 2020.

The agreement provides opportunities to increase trade and support jobs and growth on both sides by opening up services and public procurement markets. EU companies will have better access to the Vietnamese public procurement markets than companies from any other country. The public procurement chapter of the trade agreement contains procurement provisions based on the GPA principles of non-discrimination, transparency and fairness in procurement procedures.

As for market access coverage in the utilities sectors, in the agreement's Annex on 'other entities', Vietnam lists 42 entities, including entities operating in the railways (Vietnam Railways) and electricity (Vietnam Electricity) sectors. The EU provides reciprocal commitments to Vietnam, opening access to two of the utility sectors that it covers under the GPA: electricity and railways.

3.5.10. United Kingdom

On 24 December 2020, the European Union and the United Kingdom concluded a Trade and Cooperation Agreement (TCA)[22] which started to apply provisionally on 1 January 2021.

[22] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 444, 31.12.2020, p. 14.

The agreement contains some of the most ambitious provisions on public procurement ever entered into by the European Union, going beyond commitments under the GPA. It provides for rules on the use of electronic means in procurement, electronic publication of notices, environmental, social and labour considerations, and domestic review procedures. The European Union and the United Kingdom extended their reciprocal market access coverage beyond the GPA by adding: the gas and heat distribution sector; private utilities with special and exclusive rights; and a range of additional services in the hospitality, telecoms, real estate, education and other business sectors.

The Agreement further provides for non-discrimination of EU companies established in the UK (and vice versa) for any procurement (i.e. including procurement below the GPA/TCA thresholds and for non-covered procurement).

4. ONGOING BILATERAL NEGOTIATIONS AND AGREEMENTS NOT YET SIGNED

Negotiations on trade agreements, all of which aim at including chapters on government procurement, are ongoing with: Australia, Azerbaijan, Chile, Indonesia, Kyrgyzstan, New Zealand and Uzbekistan.

The EU and Mercosur reached an agreement in principle (on the trade part of the Association Agreement) on 28 June 2019. The EU and Mexico reached an agreement in principle on 21 April 2018, which was complemented by the agreement on public procurement at sub-central level reached in April 2020.

5. CONCLUSIONS

For many years, the European Union has supported the opening of procurement markets through the removal of barriers.

In this context, the European Union continues to support the accession of new members to the GPA, which remains the crucial instrument for opening up international procurement markets under the WTO. In parallel, the European Union continues to negotiate and implement ambitious bilateral and regional trade agreements. These efforts at multilateral and bilateral levels will enable Union undertakings to benefit from further opportunities, including in the utilities sectors, based on transparency, national treatment and non-discrimination.