Council Decision (EU) 2019/349 of 22 February 2019 establishing the position to be taken on behalf of the European Union within the Committee on Government Procurement of the World Trade Organisation on the accession of the United Kingdom of Great Britain and Northern Ireland to the Revised Agreement on Government Procurement in the context of its withdrawal from the European Union

COUNCIL DECISION (EU) 2019/349

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Union is a Party to the Revised Agreement on Government Procurement ('the Revised GPA'), and its Member States are covered by the Revised GPA pursuant to Union law.

(2) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or, failing that, two years after that notification, namely from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period. The Revised GPA will automatically cease to apply to the United Kingdom from that date.

(3) On 1 June 2018 the United Kingdom, with the support of the Union, applied for accession to the Revised GPA.

(4) According to Article XXII:2 of the Revised GPA, any Member of the WTO may accede to that Agreement on terms to be agreed between that Member and the Parties, with such terms stated in a decision adopted by the Committee on Government Procurement ('the GPA Committee'). Accession is to take place by deposit with the Director-General of the WTO of an instrument of accession that states the terms so agreed. The Revised GPA enters into force for a Member acceding to it on the 30th day following the deposit of its instrument of accession.

Changes to legislation: *There are currently no known outstanding effects for the Council Decision (EU) 2019/349. (See end of Document for details)*

(5) The United Kingdom's commitments on government procurement market access coverage are laid down in its final offer, circulated to the Parties to the GPA on 2 October 2018.

(6) The final offer of the United Kingdom is an appropriate one since the United Kingdom's commitments on coverage offer to the Union the maximum coverage the United Kingdom currently has under the Union's GPA schedule, which corresponds to the coverage that the United Kingdom currently has under the Union schedule as a Member State. The Union should provide reciprocal treatment and adapt its schedule in order to provide a corresponding level of access to the United Kingdom's economic operators under the Revised GPA. In addition, clarifications are necessary in the Union schedule in Appendix I to the Revised GPA since the United Kingdom will no longer be covered by that schedule under the Revised GPA. These terms, as set out in the Annex to this Decision, will become part of the terms of accession to the Revised GPA for the United Kingdom and will be reflected in the decision to be adopted by the GPA Committee on the United Kingdom's accession.

(7) It is therefore appropriate to establish the position to be taken on behalf of the Union within the GPA Committee in relation to the accession of the United Kingdom to the Revised GPA.

(8) In the event of a withdrawal agreement between the United Kingdom and the Union providing for a transition period during which Union law would apply to and in the United Kingdom, the Union should notify the other Parties to the GPA that the United Kingdom is to be treated as a Member State for the purposes of the Revised GPA during such transition period. Hence, the United Kingdom would be covered by the Revised GPA until the date of expiry of the agreed transition period. In that case, the United Kingdom should submit an updated set of replies to the Checklist of Issues no later than three months prior to the end of the transition period. The GPA Committee will review the United Kingdom's updated set of replies to the Checklist of Issues and consider an appropriate decision at that time.

(9) While the United Kingdom will not be a third country when the GPA Committee decides on the United Kingdom's accession to the Revised GPA, it is in the interest of the Union to ensure that the Revised GPA enters into force for the United Kingdom as from the day following that on which Union law ceases to apply to and in the United Kingdom. Until its withdrawal from the Union, the United Kingdom remains a Member State enjoying all the rights and bound by all obligations stemming from the Treaties, including compliance with the principle of sincere cooperation.

(10) If Union law continues to apply to and in the United Kingdom, the Commission should be authorised to notify the GPA Committee, on behalf of the Union, within 30 days of the deposit of the United Kingdom's instrument of accession, that the United Kingdom continues to be covered by the Revised GPA pursuant to Union law,

HAS ADOPTED THIS DECISION: