

CONCORDAT ON CO-ORDINATION OF EU, INTERNATIONAL AND POLICY ISSUES ON PUBLIC PROCUREMENT

1.1 This document is to be read in conjunction with:

- the Memorandum of Understanding (MOU) between the UK Government and Northern Ireland Executive Committee and the enabling legislation which establishes the Northern Ireland Executive. Reference to transferred or non-transferred matters will be construed in accordance with the MOU;
- the overarching Concordat on the co-ordination of European Union Policy Issues;
- the overarching Concordat on International Relations;
- the Concordat between the Northern Ireland Executive and H M Treasury; and
- the Concordat between the Northern Ireland Executive and the Department of Trade and Industry.

1.2 This agreement between Northern Ireland Executive Committee and the UK Government is not intended to constitute a legally enforceable contract or to create any rights or obligations which are legally enforceable. It is intended to be binding in honour only.

2. Purpose

2.1 This Concordat sets out the mechanisms between the UK Government and the Northern Ireland Executive for the handling of EU, international and policy issues on public procurement. Specifically it covers:

- provision of information;
- formulation of UK policy;
- attendance at EU and international (eg WTO) meetings;
- implementation of EU and international obligations; and
- infraction proceedings.

2.2 It is intended to guide the actions of officials working on these matters in the Northern Ireland Executive in particular the Department of Finance and Personnel and the UK Government, in particular the joint H M Treasury and DTI Procurement Policy Unit (PP) of the Office of Government Commerce.

2.3 The general principles on which this Concordat is based are those set out in the overarching

Concordat on the co-ordination of European Union policy issues.

3. General

3.1 Relations with the EU on public procurement policy and the development of EC legislation and international agreements in this field are the responsibility of the United Kingdom, as member state, Parliament and Government. The development and application of public procurement policy in Northern Ireland, however, is a transferred matter. The UK Government therefore wishes to involve the Northern Ireland Executive as directly and fully as possible in decision-making on EU and international public procurement matters.

3.2 To ensure that non-transferred matters which may affect transferred areas and transferred matters which may affect non-transferred areas are considered fully, Ministers and officials of the Northern Ireland Executive and the UK Government will maintain close working relationships and will inform each other at an early stage of any relevant proposals or other developments on procurement policy and legislation, including litigation and infraction cases of potentially wider significance.

3.3 Given the common aim of achieving value for money, normally through competition and having due regard to propriety, regularity and the costs of acquisition, the Northern Ireland Executive will seek to ensure that the policy and legal framework for public procurement in Northern Ireland complies appropriately with the UK's EU and international obligations and will not prejudice the UK's objective of seeking EU and international measures which are effective in opening procurement markets and which do not impose any unnecessary burdens or constraints on purchasers or suppliers.

4. Consultation and Exchange of Information

4.1 The parties confirm their commitment to consult and exchange information on matters of mutual interest in a timely and helpful manner. There will be regular consultation between officials from the Procurement Policy Unit (PP) and the Northern Ireland Executive to ensure that there is co-operation between the two administrations and that the business of both operates effectively and efficiently.

4.2 To this end there should be a formal liaison meeting between officials at least twice a year. In addition, the Head of Procurement of the Northern Ireland Executive or a nominee will normally be invited to participate in the Procurement Policy Committee and its Sub-Committees. Similarly, the Head of PP will be invited to any equivalent meetings in Northern Ireland.

4.3 In accordance with the framework set out in the Memorandum of Understanding, advance notification of, and consultation on, policy initiatives and associated announcements will normally take place not less than one month prior to the announcement. In the case of legislative proposals, including subordinate legislation, advance notification and consultation shall normally take place not less than three months prior to the introduction of primary legislation and the making of secondary legislation.

4.4 Each party undertakes to ensure that policy statements, interpretative documents or

guidance notes are copied in draft to the other. This shall normally be in sufficient time to allow the other party to give full and proper consideration to the draft. Officials of each administration shall also ensure that relevant officials in the other are included in the circulation lists for such material when finalised.

4.5 In accordance with the Memorandum of Understanding both parties will also encourage joint working. For example, by inviting officials of the other administration to join working groups which may be of interest to them.

4.6 In respect of the EC/WTO rules, information will be provided by PP in accordance with the overarching Concordat on Co-ordination of European Policy Issues.

5. Formulation of policies and guidance in support of the common aim

5.1 When considering new policies, interpretative documents or guidance, in support of the agreed common aim (as set out above) the parties will ensure that they give full and proper consideration to each other's views and that, wherever possible, agreement is obtained in advance. The parties also undertake to conduct their relationship on a "no surprises" basis.

5.2 DTI Ministers in consultation with Treasury Ministers will retain lead responsibility for developing UK policies in respect of the EC/WTO rules, taking into account the views of the Foreign and Commonwealth Office.

6. Attendance at Council of Ministers and Related Meetings

6.1 Arrangements for attendance at the Council of Ministers and related meetings (including the standing Advisory Committee on Public Contracts) will be in accordance with the overarching Concordat on Co-ordination of European Policy Issues.

6.2 Officials of the Northern Ireland Executive will have a role in supporting the single UK negotiating line and might, for example, attend Council Working Groups on procurement matters and the Advisory Committee on Public contracts as observers. They will be kept fully informed by PP of the arrangements for such meetings, including being provided with any relevant documentation. In practice attendance would be agreed bilaterally with PP as the lead Whitehall department as provided for by the overarching Concordat on Co-ordination of European Policy Issues.

6.3 Where appropriate, and by prior agreement, it will be open for Ministers or officials of the Northern Ireland Executive to represent the UK at such meetings.

7. Implementation of EC Procurement Directives

7.1 Arrangements for the implementation of the EC procurement directives will be in accordance with the overarching Concordat on Co-ordination of European Policy Issues.

7.2 As procurement is a matter falling within the responsibility of the Northern Ireland Executive, Northern Ireland Ministers will have the power to implement EC public procurement

directives separately. Should Northern Ireland Ministers prefer not to implement separately, they may opt for UK implementing legislation to be made (or introduced) by the Treasury as the designated department. In accordance with the overarching Concordat on Co-ordination of European Policy issues, where Northern Ireland Ministers choose to implement separately, they will have a responsibility to consult UK Ministers and others as appropriate. Close liaison will be necessary to ensure consistency of effect and, where appropriate, timing.

8. Procurement Related Infraction Proceedings

8.1 Arrangements for the handling of procurement related infraction proceedings will be in accordance with the overarching Concordat on Co-ordination of European Policy Issues.

8.2 Where cases relate to the conduct of contracting authorities in Northern Ireland, or exclusively to implementation of the procurement directives in Northern Ireland, a draft reply will be prepared by officials of the Northern Ireland Executive. The draft will be agreed at official, and where necessary Ministerial, level with interested Whitehall departments. It will then be submitted through UKRep in the normal way. All formal Commission correspondence and UK replies to procurement related infraction proceedings (including pre-Article 226 letters) will be copied in draft to officials of the Northern Ireland Executive, to ensure that they are kept fully informed of developments and that they have the opportunity to comment.

8.3 Officials of the Northern Ireland Executive will also be invited to participate in any “package meetings” arranged to discuss procurement infraction cases.

9. Resolution of Disagreements

9.1 The main intention of this Concordat is to provide a framework for full and proper consultation and co-operation. It is hoped that this will minimise the chances of disputes occurring.

9.2 Where disputes do arise, both parties should strive to resolve them through the general framework for consultation set out above. If it is not possible to resolve a dispute by such means, resolution will be in accordance either with the relevant provisions set out in the DTI and HM Treasury Concordats with the Northern Ireland Executive or, if more appropriate given the nature of the dispute, with the relevant provisions of the overarching Concordat on Co-ordination of European Policy Issues.

10. Review

10.1 This Concordat, and the functioning of bilateral relations generally, will be reviewed one year after coming into operation and every three years thereafter. Either party may request an additional review if they consider it necessary (for example to propose new provisions as the relationship develops). Any changes to the Concordat must be with the agreement of both parties.