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2013/0077 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be taken by the European Union within the Committee on Government Procurement with respect to decisions implementing certain provisions of the Protocol Amending the Agreement on Government Procurement

EXPLANATORY MEMORANDUM

1. BACKGROUND

The Agreement on Government Procurement (GPA)[1] is to date the only legally binding agreement in the WTO on the subject of government procurement. Its present version was negotiated in parallel with the Uruguay Round in 1994, and entered into force on 1 January 1996 (the "1994 GPA").

The Parties to the 1994 GPA are: Armenia, Canada, European Union with respect to its 27 Member States, Hong Kong-China, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, Chinese Taipei, United States. The GPA is administered by the Committee on Government Procurement (hereinafter the "Committee").

The 1994 GPA has contain a built-in commitment to negotiations on both the text and coverage of the Agreement since its adoption in 1994 (Article XXIV:7(b)). Negotiations to that end were launched in 1999.

Negotiations have been conducted by the Commission on behalf of the EU. The Council was regularly informed orally and in writing about the state of play of the negotiations via the Trade Policy Committee. In addition, co-ordination meetings with Member States were held prior to each negotiating session in Geneva. The European Parliament has been informed regularly in writing via the INTA Committee.

On 30 March 2012 the negotiators adopted a Decision on the Outcomes of the Negotiations whereby they adopted the elements of the results of the negotiations ("Decision on the Outcomes of the Negotiations") consisting of: i) the Protocol amending the Agreement on Government Procurement (hereinafter the "Protocol") and ii) seven Decisions (hereinafter "the Decisions") of the Committee. By means of the Decision on the Outcomes of the Negotiations, the GPA Parties adopted the Protocol, and opened it for acceptance by the Parties to the 1994 GPA. The Protocol will enter into force for those Parties to the 1994 GPA that have deposited their respective instruments of acceptance of this Protocol, on the 30th day following such deposit by two thirds of the Parties to the 1994 GPA. Furthermore, the Decision on the Outcomes of the Negotiations sets out the Decisions of the Committee establishing future work programmes of the Committee and detailing notification requirements pursuant to Articles XIX and XXII of the Agreement.

The Decisions form part of the negotiated package and reflect the GPA Parties commitment to start implementing certain provisions of the revised GPA, as soon as the Protocol enters into force.

In view of their substance it was not considered appropriate to include the Decisions in the Protocol itself, thereby subjecting them to the same amendment procedures. Nor was it possible to adopt them prior to the entry into force of the provisions of the Protocol they would be implementing. The GPA parties therefore reached an agreement on the substance of the Decisions, which would have to be given effect at the first meeting of the Committee following the entry into force of the Protocol, when the Committee would take a decision confirming the political commitment to adopt the decisions with an effect as of the date of entry into force of the Protocol.

As both the Protocol and the Decisions are the object of the agreement adopted in March 2012, they form part of the same package for the purpose of the EU ratification of the GPA

[1] Official Journal J C256, 3.9. 1996 pag. 1.

revision. As the Union will be required to take a position with regard to the Decisions at the first meeting of the Committee following the entry into force of the Protocol, the Decisions are subject to a different internal decision-making procedure than the Protocol. Therefore a separate Council Decision is needed with regard to the Decisions, in addition to the one concerning the conclusion of the Protocol.

If the Council, after obtaining the consent of the European Parliament, adopts a decision to conclude the Protocol Amending the Agreement on Government Procurement on behalf of the European Union, the Union should be in a position to take a position with regard to the Decisions within the Committee.

2. THE OUTCOME OF THE NEGOTIATION

The Decisions to be adopted are the following:

i) Decision of the Committee on Government Procurement on Notification requirements under Article XIX and XXII of the Agreement: it aims at facilitating notification requirements, by clarifying the modalities of notification by a Party with regard to the changes to its laws and regulations and its list of entities.

ii) Decision of the Committee on Government procurement on adoption of work programmes: identifies some specific work programmes on which the Parties commit to conduct future work.

iii) Decision of the Committee on Government procurement on a Work programme on SMEs: sets out a work programme on SMEs, aimed at facilitating SMEs participation in government procurement, avoidance of discriminatory SMEs measures and increasing transparency.

iv) Decision of the Committee on Government Procurement on a work programme on collection and reporting of statistical data: aims at facilitating the compliance with the obligation to collect statistical data.

v) Decision of the Committee on Government Procurement on a work programme on sustainable procurement: sets out a work programme aimed at ensuring that sustainable procurement policies are compatible with the principles of non-discrimination and transparency.

vi) Decision of the Committee on Government Procurement on a work programme on exclusions and restriction in parties' Annexes: adopts a work programme aimed at progressively reducing the exclusions and restrictions that the Parties have foreseen in their Annexes.

vii) Decision on a work programme on safety standards: adopts a work programme aimed at making sure that public safety concerns are applied in a way not to create arbitrary and unjustified discriminations or disguised restrictions.

In so far as they facilitate the implementation of GPA principles and contribute to the elimination of discriminatory practises, the adoption of the Decisions will create a favourable environment for further openings of government procurement.

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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 Article 207(4) first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The negotiations on the revision of the WTO Agreement on Government Procurement (GPA) were launched in January 1999, based on a commitment built-in to Article XXIV:7(b) of the GPA.

(2) Negotiations have been conducted by the Commission in consultation with the Committee established by Article 207 of the Treaty on the Functioning of the European Union.

(3) In the context of these negotiations the negotiators reached on 30 March 2012 an agreement on a Protocol Amending the Agreement on Government Procurement ("the Protocol"), as well as on seven decisions to be adopted by the Committee on Government procurement that would start the implementation of certain provisions of the Protocol immediately upon its entry into force. These are the following: i) Decision of the Committee on Government Procurement on Notification requirements under Article XIX and XXII of the Agreement; ii) Decision of the Committee on Government procurement on adoption of work programmes; iii) Decision of the Committee on Government procurement on a Work programme on SMEs; iv) Decision of the Committee on Government Procurement on a work programme on collection and reporting of statistical data; v) Decision of the Committee on Government Procurement on a work programme on sustainable procurement; vi) Decision of the Committee on Government Procurement on a work programme on exclusions and restriction in parties' Annexes; vii) Decision on a work programme on safety standards; (hereafter "the Decisions").

(4) The agreement reached on 30 March 2012 would have to be given effect at the first meeting of the Committee on Government Procurement following the entry into force of the Protocol. At that meeting the Committee on Government Procurement will take a decision confirming the adoption of these seven Decisions and their entry into force as of the date of entry into force of the Protocol.

(5) In so far as the Decisions facilitate the implementation of principles of the Agreement on Government Procurement as revised and contribute to the elimination of discriminatory practises, the adoption of the Decisions will facilitate further openings of government procurement.

(6) It is appropriate, therefore, to establish the position to be taken by the Commission on behalf of the Union within the Committee on Government Procurement in relation to the Decisions.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union within the Committee on Government Procurement is to confirm the adoption of the following: i) Decision of the Committee on Government Procurement on Notification requirements under Article XIX and XXII of the Agreement; ii) Decision of the Committee on Government procurement on adoption of work programmes; iii) Decision of the Committee on Government procurement on a Work programme on SMEs; iv) Decision of the Committee on Government Procurement on a work programme on collection and reporting of statistical data; v) Decision of the Committee on Government Procurement on a work programme on sustainable procurement; vi) Decision of the Committee on Government Procurement on a work programme on exclusions and restriction in parties' Annexes; vii) Decision on a work programme on safety standards; and agree to their entry into effect as of the date of entry into force of the Protocol amending the Agreement on Government Procurement.

This position shall be expressed by the Commission.

The text of the Decisions is attached to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President