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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	26 August 2015
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2015) 407 final
Subject:	Proposal for a COUNCIL DECISION establishing the position to be taken on behalf of the European Union within the Committee on Government Procurement on the accession of Ukraine to the Agreement on Government Procurement

Delegations will find attached document COM(2015) 407 final.

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EUROPEAN
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Brussels, 26.8.2015
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Proposal for a

COUNCIL DECISION

**establishing the position to be taken on behalf of the European Union within the
Committee on Government Procurement on the accession of Ukraine to the Agreement
on Government Procurement**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On 13 December 2012, Ukraine applied to accede to the WTO Agreement on Government Procurement ("GPA"). It submitted revised coverage offers on 7 March 2014, 28 October 2014, 27 April 2015, 27 May 2015 and 29 June 2015.

The Commission, on behalf of the Union, negotiated a series of market opening commitments of Ukraine, both in a bilateral format and within the WTO the Committee on Government Procurement ("GPA Committee").

Ukraine subsequently submitted a final offer to the GPA Committee. A summary of Ukraine's final offer and the Commission's assessment thereof are set out below.

The decision enables the Commission to express the Union's opinion on the accession of Ukraine within the GPA Committee.

- **Consistency with existing policy provisions in the policy area**

This is the standard procedure followed when the Commission needs to express the Union's opinion on the accession of a third country within the GPA Committee.

- **Consistency with other Union policies**

Not relevant.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides that, when a decision having legal effect needs to be taken in a body set up by an international agreement, the Council, on a proposal from the Commission, should adopt a Decision establishing the position to be adopted on the Union's behalf. The decision of the GPA Committee that will set out the terms of Ukraine's accession falls under Article 218(9) TFEU as the decision is taken in a body set up by an international agreement and it will have legal effects.

- **Subsidiarity (for non-exclusive competence)**

The EU has exclusive competence in trade related matters. The concerted action at Union level can ensure the best leverage towards third countries.

- **Proportionality**

Not relevant.

- **Choice of the instrument**

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides that, when a decision having legal effect needs to be taken in a body set up by an international agreement, the Council, on a proposal from the Commission, should adopt a Decision establishing the position to be adopted on the Union's behalf.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not relevant.

- **Stakeholder consultations**

Not relevant.

- **Collection and use of expertise**

Not relevant.

- **Impact assessment**

The accession of a third country to an international agreement where the Union is a party does not necessitate an impact assessment.

- **Regulatory fitness and simplification**

Not relevant.

- **Fundamental rights**

Not relevant.

4. BUDGETARY IMPLICATIONS

No.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not relevant.

- **Explanatory documents (for directives)**

Not relevant.

- **Detailed explanation of the specific provisions of the proposal**

Ukraine's final offer

Market access commitments (covered entities, goods, services and construction services)

Thresholds

The thresholds for the different Annexes offered by Ukraine correspond to the standard thresholds applied by GPA Parties.

Entities

In Annex 1 (“central government entities”) Ukraine offers a very large number of central government entities following a definition-based approach. It includes an indicative list of these entities. There are no notes with exclusions or reservations.

In Annex 2 (“sub-central government entities”) Ukraine grants an important number of sub-central entities by way of a definition and includes an indicative list of these entities. There are no notes with exclusions or reservations.

In Annex 3 (“other entities”) Ukraine grants to GPA Parties access to the procurement of entities in a very extensive number of utilities sectors, based on a definition and including an indicative list, as requested by the EU.

It has included a note inspired by a EU note under Annex 3 which excludes procurement from affiliated undertakings or joint ventures.

Goods

Ukraine offers under its Annex 4 all goods procured by the covered entities.

Services

Ukraine offers under its Annex 5 all services procured by the covered entities with a small number of exceptions. These concern services of international mediation courts, international commercial arbitrages and resolution of disputes involving the procuring entity; services of financial institutions related to the raising of credit resources and funds for the charter capital by a procuring entity; research and development services and financial and related services provided by the National Bank of Ukraine. These exclusions are of limited number and nature.

Construction services

Ukraine offers the entire Division 51, CPC Prov. under its Annex 6. It does not offer any works concessions contracts.

General notes

In Annex 7 Ukraine includes two notes. These concern construction services procurement by diplomatic representations abroad and procurement in relation to protected paper, banknotes, coins and sensitive documents both of which are not covered by Ukraine's offer.

Ukraine's Legislation

Ukraine's legislation in the field of public procurement is non-discriminatory. There are no provisions granting domestic suppliers and suppliers more favourable treatment than that accorded to foreign suppliers or supplies. Ukraine's legislation on public procurement appears to be open, transparent and non-discriminatory in line with GPA requirements.

Commission's Assessment of Ukraine's Offer

The final offer of Ukraine provides for an extensive coverage of central and sub-central authorities and entities operating in the utilities sector, goods, services and construction services. Therefore, it is satisfactory and acceptable. Its government procurement legislation is compliant with the GPA.

As a result of the fact that Ukraine provides an exhaustive list of entities under its Annex 1, the access of goods, services, suppliers and service providers from Ukraine to the EU should be that indicated under point 2 of section 2 of the EU Annex 1, meaning access to the procurement of the central government contracting authorities as listed under Annex 1.

Recommendation

Ukraine's accession to the GPA is expected to make a very positive contribution to further international opening of public procurement markets, by enlarging the number of parties to the GPA and thus encouraging other countries to accede to the GPA. The Commission recommends that the final offer submitted by Ukraine is accepted with the above mentioned terms.

Accordingly, it is proposed that the Commission be authorised to express within the Committee on Government Procurement the position of the Union in favour of Ukraine's accession, to be reflected in the GPA Committee Decision on Ukraine's accession.

Proposal for a

COUNCIL DECISION

establishing the position to be taken on behalf of the European Union within the Committee on Government Procurement on the accession of Ukraine to the Agreement on Government Procurement

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) On 13 December 2012, Ukraine applied for accession to the Agreement on Government Procurement (“the GPA”),
- (2) Ukraine’s commitments on coverage are laid down in its final offer,
- (3) The final offer of Ukraine provides for an extensive coverage of central, sub-central entities and such operating in the utilities sector, goods, services and construction services. Therefore, it is satisfactory and acceptable. The terms of Ukraine's accession, as reflected in the Annex to this Decision, will be reflected in the decision adopted by the Committee on Government Procurement (“the GPA Committee”) on Ukraine's accession,
- (4) Ukraine's accession to the GPA is expected to make a positive contribution to further international opening of public procurement markets,
- (5) Article XXII(2) of the GPA provides that any Member of the WTO may accede to the Agreement on terms to be agreed between that Member and the Parties, with such terms stated in a decision of the GPA Committee.
- (6) Accordingly, it is necessary to establish the position to be taken on the Union's behalf within the GPA Committee in relation to the accession of Ukraine,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the European Union within the Committee on Government Procurement shall be to approve the accession of Ukraine to the Agreement on Government Procurement, subject to specific terms of accession set out in the Annex 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*