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**Interinstitutional File:**  
**2015/0240 (NLE)**

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**WTO 222**  
**SERVICES 38**  
**COMER 134**

**"I/A" ITEM NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee (Part 2)/Council

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No. Cion doc.: 13076/15 WTO 221 SERVICES 37 COMER 133

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Subject: Draft COUNCIL DECISION establishing the position to be taken on behalf of the European Union within the Council for Trade in Services of the World Trade Organization to notify the preferential treatment the Union intends to grant to services and service suppliers of least-developed country Members, and to seek approval for preferential treatment going beyond market access  
- Adoption

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1. On 14 October 2015 the Commission submitted to the Council a "Proposal for a Council Decision establishing the position to be taken on behalf of the European Union within the Council for Trade in Services of the World Trade Organization to seek approval for preferential treatment going beyond market access to be unilaterally offered by the European Union to services and services suppliers of Least-Developed Countries on the basis of the LDC Services Waiver"<sup>1</sup>.

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<sup>1</sup> ST 13076/15

2. On 3 November 2015, the Trade Policy Committee (Services and Investment), after an informal silence consultation, endorsed a compromise proposal of the Luxembourg Presidency. The Presidency compromise proposal aligned the Commission's proposal for a Council Decision with the outcome of the COREPER meeting of 22 July 2015 where the subject was addressed, and took into account Member States' requests for a separate Decision by the Representatives of the Governments of the Member States meeting within the Council as regards to the matters falling within Member States' competence.
3. It should be noted that the WTO document, referred to in Article 1 of the Council Decision, shall contain the European Union's notification of preferential treatment that the Union intends to grant to services and service suppliers of least-developed country Members, covering Market Access and beyond, as set out in document ST 13076/1/15 ADD 1 REV 1, to be submitted to the Council in English only<sup>2</sup> and as such not to be published in the Official Journal.
4. Subject to confirmation by the Permanent Representatives' Committee,
  - the Council is invited to adopt the above-mentioned Decision, as finalised by the legal linguistic experts and set out in document 13078/15 WTO 223 SERVICES 39 COMER 135;
  - the Representatives of the Governments of the Member States meeting within the Council are invited to confirm their common accord as regards to the matters falling within Member States' competence;
  - the Representatives of the Governments of the Member States meeting within the Council are invited to adopt the Decision, as set out in ANNEX I to this note;
  - the Council is invited to enter in its minutes the statements, as set out in ANNEX II to this note.

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<sup>2</sup> following adoption by the Commission College on 11 November 2015

**Decision by the Representatives of the Governments of the Member States meeting within the  
Council**

The position to be taken by the Member States shall be to support the Union notifying the Council for Trade in Services of the WTO of preferential treatment that the Union intends to grant to services and service suppliers of least-developed country Members in accordance with the WTO Ministerial Decisions of 17 December 2011 and 7 December 2013 and to support the Union seeking approval within the CTS of the WTO with regard to the preferential treatment going beyond market access.

Done at .....

For the Representatives of  
the Governments of the  
Member States  
The President

**Statement by the Commission**

The Commission considers that a Council Decision pursuant to Article 218(9) is not legally warranted for the European Union to notify its intention to grant preferential treatment to services and services suppliers of Least Developed Countries in accordance with the LDC waiver to the WTO Council for Trade in Services.

The Commission considers that the Decision of the Representatives of the Governments of the Member States meeting within the Council adopting the position of the Member States in the WTO on this matter is unwarranted, because the preferential treatment including elements that go beyond market access within the meaning of Article XVI GATS to be granted by the European Union to services and service suppliers of Least Developed Countries in accordance with the LDC waiver falls within the framework of the EU competencies as defined by the Treaty on the Functioning of the European Union.

**Statement by Ireland**

The provisions relating to the temporary presence of natural persons for business purposes included in the notification authorized by the Council Decision only bind Ireland as part of the Union where it has notified its wish to participate in the above Decision in accordance with Protocol No.21 on the position of Ireland and the United Kingdom in respect of the area of Freedom, Security and Justice. Ireland will ensure that the temporary presence of natural persons for business purposes is allowed in accordance with those provisions.

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