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WTO 17
COLAC 7

'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

No. Cion doc.: 5696/21 WTO 16 COLAC 6 + ADD 1

Subject: Council Decision on the position to be adopted, on behalf of the European Union, within the Trade Committee established by the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Peru and Ecuador, of the other part, as regards the amendment of Appendix 1 of Annex XII (Government Procurement)
- Adoption

1. On 27 January 2021, the Commission submitted to the Council the above mentioned proposal (doc. 5696/21 + ADD 1).
2. The Trade Policy Committee (Deputies) was consulted on this text in writing and endorsed it as modified to take into account a number of necessary adjustments.

3. In the light of the above, and subject to confirmation by the Permanent Representatives' Committee, the Council is invited to:

- adopt the Council Decision as finalised by the legal-linguistic experts and set out in documents 5698/21 and 5699/21;
- decide to order the publication in the Official Journal of the European Union of the Decision of the EU - Colombia - Peru - Ecuador Trade Committee, as set out in document 5699/21, once adopted;
- note that the European Parliament will be informed in accordance with Article 218(10) TFEU, and that the Decision will be transmitted to the Parliament; and
- decide to enter in its minutes the statements contained in annex to this note.

Statement by the Commission

The Commission considers that the Council Decision should be addressed to the Commission, and therefore considers the changes to Article 3 to be inappropriate.

The expression of the Union position in a body set up by an agreement is an act of external representation of the Union which, in accordance with Article 17(1) TEU, is the institutional prerogative of the Commission.

The Commission reserves all its rights in this regard.

Statement by the Commission

The Commission considers it legally incorrect to indicate, in addition to Article 207(4) TFEU, Articles 91 and 100(2) TFEU as the substantive legal bases of this Decision.

In the Commission's view, the predominant purpose of the Decision falls under the common commercial policy, whereas it relates merely incidentally to the procurement of transport services. Therefore, the Decision should indicate solely Article 207(4) TFEU as its single substantive legal basis.

The Commission reserves all its rights in this regard.