



EUROPEAN
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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 Montenegro to the
Agreement on Government Procurement**

EXPLANATORY MEMORANDUM

1. INTRODUCTION

On 4 November 2013, Montenegro applied to accede to the WTO Agreement on Government Procurement (“GPA”). Montenegro indicated its intention to complete its accession with reference to the text of the GPA, as amended (the text was adopted by the Parties on 30 March 2012 and concluded by the EU via a Council decision of 3.12.2013¹). The GPA, as amended, has entered into force for the Union, on 6 April 2014.

The Commission, on behalf of the Union, negotiated a series of market opening commitments as presented by Montenegro both in a bilateral format and within the WTO the Committee on Government Procurement (“GPA Committee”).

Montenegro subsequently submitted a final offer on 18 July 2014. A summary of Montenegro's final offer and the Commission's assessment thereof are set out below.

2. SUMMARY OF THE TERMS OF MONTENEGRO'S ACCESSION TO THE GPA

Montenegro's final offer

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

Entities

In Annex 1 (“central government entities”) Montenegro provides for an exhaustive list featuring central government entities whose procurement is open to GPA Parties. The notes included under this Annex are identical to the EU ones.

In Annex 2 (“subcentral government entities”) Montenegro includes all regional and local contracting authorities of administrative units. The definition of administrative units corresponds to the EU classification of such units as laid down in Regulation (EC) No 1059/2003 of the European Parliament and of the Council². Bodies governed by public law are also included under Annex 2. The definition of those bodies is identical to the EU one as provided for in Directive 2014/24/EU of the European Parliament and of the Council³. An indicative list of those bodies is added to the Annex. The notes specified under Annex 2 correspond to the EU notes under Annex 2.

In Annex 3 (“other entities”) Montenegro grants to GPA Parties all utilities operating in the same sectors (meaning drinking water, electricity, airport, port, urban transport and railways) as provided for by the EU. An indicative list of entities is included. The reservations provided for under this Annex are identical to the ones contained in the EU Annex 3.

Goods

Montenegro provides for a positive list of goods containing some exceptions which correspond to those included in the EU Annex 4.

¹ Council Decision of 2 December 2013 on the conclusion of the Protocol Amending the Agreement on Government Procurement (OJ L 68, 7.3.2014, p. 1).

² Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS), (OJ L 154, 21.6.2003, p.1).

³ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

Services

Montenegro offers a positive list of services which corresponds to those offered by the EU in its Annex 5.

Construction services

Montenegro offers all the construction services in Division 51 of the Central Product Classification, as it is commonly offered by all GPA Parties. Moreover, it grants to the EU and few other GPA Parties access to works concessions contracts under a national treatment regime.

Thresholds

Montenegro applies thresholds that are commonly applied by GPA Parties for goods, services and construction services.

Montenegro's Legislation

Given its status as a candidate country (to accede to the EU), Montenegro's public procurement system is broadly aligned with the EU acquis on public procurement. Montenegro's legislation in the field is non-discriminatory. There are no provisions granting domestic suppliers and suppliers more favourable treatment than that accorded to foreign suppliers or supplies.

Commission's Assessment of Montenegro's Offer

The final offer of Montenegro mirrors the EU offer under Appendix I to the revised GPA. Therefore, it is satisfactory and acceptable. Its government procurement legislation is compliant with the GPA.

In particular, the following terms of Montenegro's accession will be reflected in the EU Appendix I:

With regard to the fact that Montenegro provides an exhaustive list of entities under its Annex 1, the access of goods, services, suppliers and service providers of Montenegro to the EU coverage 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.

Montenegro will be included among the GPA Parties (Iceland, Liechtenstein, Norway, Switzerland and South-Korea) to which the EU gives access to works concessions tenders under section 2 of Annex 6.

3. LEGAL ELEMENTS OF THE PROPOSAL

The revised GPA includes a provision on accession. Article XXII(2) of the GPA provides that any Member of the WTO may accede to the GPA on terms to be agreed between that Member and the Parties, with such terms stated in a decision of the GPA Committee.

The terms of Montenegro's accession will be set out in a decision of the GPA Committee which is expected to be adopted in the second half of 2014. This decision will include Montenegro's final offer for access to its public procurement market (which will become part of Appendix I to the GPA upon Montenegro's accession), as well as any specific terms of accession requested by other GPA Parties. The Decision will be adopted by consensus within the GPA Committee.

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 Montenegro'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.

4. RECOMMENDATION

Montenegro'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 by Montenegro 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 Montenegro's accession, to be reflected in the GPA Committee Decision on Montenegro's accession.

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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 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 4 November 2013, Montenegro applied for accession to the Agreement on Government Procurement (“the GPA”).
- (2) Montenegro’s commitments on coverage are laid down in its final offer, as submitted to the GPA Parties on 18 July 2014.
- (3) Montenegro’s final offer mirrors the Union’s offer under Appendix I to the revised GPA. Therefore, it is satisfactory and acceptable. The terms of Montenegro'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 Montenegro's accession.
- (4) Montenegro'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 Montenegro,

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 Montenegro 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*