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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 the Republic of Moldova to
the Agreement on Government Procurement**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

On 7 January 2002, the Republic of Moldova applied to accede to the WTO Agreement on Government Procurement ("GPA"). It submitted revised coverage offers on 13 September 2012, 16 January 2014 and 24 June 2014.

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

The Republic of Moldova subsequently submitted a final offer to the GPA Committee on 27 May 2015. A summary of the Republic of Moldova'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 the Republic of Moldova 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 the Republic of Moldova'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**

The Republic of Moldova's final offer

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

Thresholds

The thresholds for the different Annexes offered by the Republic of Moldova correspond to the standard thresholds applied by GPA Parties. However, the Republic of Moldova provides for a two-year transitory period for the thresholds applied to the procurement of goods and services by entities covered under Annexes 1 to 3, by means of footnotes.

Entities

In Annex 1 (“central government entities”) the Republic of Moldova provides for an exhaustive list featuring central government entities whose procurement is open to GPA Parties. No notes are included under this Annex. The thresholds in respect of goods and services for the first year following the accession is set at 300 000 SDR, for the second year-200 000 SDR.

In Annex 2 (“subcentral government entities”) the Republic of Moldova includes an exhaustive list of local contracting authorities as defined by the Law on Local Public Administration No 436-XVI of 28 December 2006. In a note to this Annex, the Republic of Moldova specifies that those entities include their subordinate bodies and organisations which are under supervision or control of such authorities. The thresholds in respect of goods and services for the first year following the accession is set at 400 000 SDR, for the second year- 300 000 SDR.

In Annex 3 (“other entities”) the Republic of Moldova grants to GPA Parties access to the procurement of all legal entities (authorities, establishments and foundations) governed by public law and not having an industrial or commercial character, whose procurement is covered by Law on Government Procurement No 96-XVI of 13 April 2007. It includes an indicative list of such entities.

In addition, under Annex 3 the Republic of Moldova offers all legal persons as specified under the national law, operating in utilities sectors such as production, transport or distribution of drinking water, electricity and /or thermal energy, port or other terminal facilities, airport facilities, urban transport and railway transport. An indicative list of entities is included. There are no reservations specified under this Annex.

The thresholds in respect of goods and services for the first year following the accession is set at 600 000 SDR, for the second year- 500 000 SDR.

Goods

The goods listed by the Republic of Moldova are almost identical with those provided by the EU. In particular, the Republic of Moldova further includes in Annex 4 HS Chapter 36, 72, 88 and 97. However, the Republic of Moldova excludes positions 65.05, 82.08, 89.03.

In the subsequent modifications of its final offer, as last communicated on 27 May 2015 the Republic of Moldova further added HS Chapter 85 excluding positions 85.03, 85.13 and 85.15 to the list of goods and equipment categories covered for the Ministry of Defence.

Services

The Republic of Moldova provides for a list of covered services which is larger than the EU one. However, a reciprocity note under the Annex stipulates that these services are covered with respect to a particular party only to the extent that such Party has included those services in its Annex 5.

Construction services

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

General notes

In Annex 7 the Republic of Moldova includes three notes. Note 1 concerns procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes and mirrors the first part of EU note 1 under Annex 7. The other two notes do not apply to the EU.

The Republic of Moldova's Legislation

The Republic of Moldova'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 suppliers. The Republic of

Moldova's legislation on public procurement appears to be open, transparent and non-discriminatory in line with GPA requirements.

Commission's Assessment of the Republic of Moldova's Offer

The final offer of the Republic of Moldova 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. Its government procurement legislation is compliant with the GPA.

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

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

Recommendation

The Republic of Moldova'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 the Republic of Moldova 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 the Republic of Moldova's accession, to be reflected in the GPA Committee Decision on the Republic of Moldova'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 7 January 2002, the Republic of Moldova applied for accession to the Agreement on Government Procurement (“the GPA”),
- (2) The Republic of Moldova’s commitments on coverage are laid down in its final offer, further improved as communicated to the GPA Parties on 27 May 2015,
- (3) The final offer of the Republic of Moldova 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 the Republic of Moldova'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 the Republic of Moldova's accession,
- (4) The Republic of Moldova'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 the Republic of Moldova,

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 the Republic of Moldova 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*