Council of the European Union

Brussels, 17 July 2023
(OR. en)

11963/23

Interinstitutional File: 2023/0274(NLE)

POLCOM 165
WTO 108
MAP 40
MI 633

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	17 July 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 450 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 adoption of its Rules of Procedure for the selection of the Chairperson

Delegations will find attached document COM(2023) 450 final.

Encl.: COM(2023) 450 final

EUROPEAN
COMMISSION

Brussels, 17.7.2023
COM(2023) 450 final

2023/0274 (NLE)

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 adoption of its Rules of Procedure for the selection of the Chairperson

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the Committee on Government Procurement ('the Committee') in connection with the envisaged adoption of its rules of procedure for the selection of the Chairperson.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement on Government Procurement

The Agreement on Government Procurement ('the Agreement') is a plurilateral agreement within the framework of the WTO, which aims to mutually open government procurement markets among its Parties. The revised version of the Agreement entered into force on 6 April 2014.

The European Union is a Party to the Agreement.

On 12 May 2023, the Committee circulated the draft rules on procedure for the selection of the Chairperson of the WTO Committee on Government Procurement (document GPA/W/349).

The decision enables the Commission to express the final position on behalf of the European Union on the draft rules of procedure for the selection of the Chairperson.

2.2. The Committee on Government Procurement

The Committee was established to administer the implementation of the GPA. It is composed of representatives from each of the Parties as well as WTO members and inter-governmental organizations with observer status.

The Committee meets regularly, around four times a year, to give Parties the opportunity to consult on any matters relating to the implementation and operation of the Agreement or the furtherance of its objectives. It also carries out other responsibilities as may be assigned to it by the Parties.

The Committee annually informs the WTO General Council of its activities and of developments relating to the implementation and operation of the Agreement.

The European Union, like all other Parties, is a member of the Committee, where it is represented by the Commission.

2.3. The envisaged act of the Committee

The purpose of the envisaged act is to adopt the rules of procedure for the selection of the Chairperson of the Committee.

The adoption of the Decision will be subject to the Parties' respective internal procedures.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

There are currently no rules of procedure regulating the adoption of the Chairperson of the Committee. The draft rules of procedure for the selection of the Chairperson of Committee

provide the rules of that selection among the representatives to the Committee, the rules of the appointment of the Chairperson, as well as the rules of the selection of an interim Chairperson in specific cases.

The draft rules of selection of the Chairperson of the Committee are as follows:

(1) The Parties shall select a Chairperson from among their representatives to the Committee on a yearly basis.

(2) The Parties may decide to extend the term of the Chairperson, drawing on Chairperson's work plan for the following year.

(3) A candidate shall be selected as Chairperson on the basis of the candidate's capacity, experience, availability and competencies to undertake the attendant responsibilities. The Chairperson will serve in their personal capacity.

(4) The outgoing Chairperson shall hold consultations to facilitate the selection. If there is no Chairperson, the Parties may appoint, by consensus, an interim Chairperson or invite the Party that provided the previous Chairperson to hold such consultations.

(5) Prior to, or in the course of the consultations, the candidate(s) for the position of the Chairperson shall be given an opportunity to present proposed plans to the Parties for the period of chairing the Committee.

(6) The appointment shall take place at the first regular Committee meeting of the year. If the office of Chairperson becomes vacant in the middle of a year, the Parties shall aim to find a replacement within the shortest possible delay.

(7) The appointment shall take effect at the end of the meeting provided in the preceding paragraph. If there is no Chairperson at that time, it shall take effect immediately.

(8) The Chairperson shall hold office until the end of the first regular meeting of the following calendar year, unless the Chairperson is no longer able to serve or resigns at an earlier time.

(9) If the Parties are unable to reach consensus on the selection of a Chairperson, so that the Committee is prevented from fulfilling its obligation to meet at least once a year, the Committee may appoint, by consensus, an interim Chairperson from among the candidates, or alternatively invite the Party that provided the previous Chairperson, to temporarily facilitate the meetings of the Committee until such time as a Chairperson can be appointed.

(10) The Parties may decide to complement these rules of procedure further. The rules of procedure may be reviewed within five years of their adoption.

4. COMMISSION'S ASSESSMENT OF THE DRAFT RULES OF PROCEDURE

The draft rules of procedure for the selection of the Chairperson of the Committee are satisfactory. They intend to provide legal certainty for the selection process of the Chairperson.

Recommendation

It is proposed that the Commission be authorised to express within the Committee the position of the European Union in favour of the adoption of the draft rules of procedure for the selection of the Chairperson of the Committee.

5. LEGAL BASIS

5.1. Procedural legal basis

5.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

The concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'.

5.1.2. Application to the present case

The Committee is a body set up by the Agreement.

The act which the Committee is called upon to adopt constitutes an act having legal effects.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

5.2. Substantive legal basis

5.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues several aims or has several components and if one of those aims or components is identifiable as the main one, whereas the others are merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

5.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common commercial policy.

Therefore, the substantive legal basis of the proposed decision is Article 207 TFEU.

5.3. Conclusion

The legal basis of the proposed decision should be Article 207 TFEU, in conjunction with Article 218(9) TFEU.

6. PUBLICATION OF THE ENVISAGED ACT

As the act of the Committee will amend the Agreement, it is appropriate to publish it in the Official Journal of the European Union after its adoption

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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 Article 207(4), first subparagraph, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on Government Procurement is a plurilateral agreement within the framework of the WTO, which aims to mutually open government procurement markets among its Parties. The revised version of the Agreement entered into force on 6 April 2014.

(2) Article XXI (1) of the Agreement establishes a Committee on Government Procurement ('the Committee') for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of the Agreement or the furtherance of its objectives.

(3) Article XXI (1) provides that the Committee is to elect its own Chairman.

(4) The draft Rules of Procedure for the selection of the Chairperson were distributed by the Committee on Government Procurement on 12 May 2023.

(5) It is appropriate to establish the position to be taken on the Union's behalf within the Committee with regard to the adoption of its rules of procedure, as those rules of procedure will be binding on the Union.

(6) The rules of procedure as set out in the Annex to this Decision should therefore be adopted in order to regulate the functioning of the Committee.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf within the Committee on Government Procurement established by the Agreement on Government Procurement, as regards the adoption of its rules of procedure for the selection of the Chairperson, shall be to support the adoption.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President