Agreement on government procurement. Protocol

2013/0086(NLE) - 22/03/2013

PURPOSE: conclusion of the Protocol amending the Agreement on Government Procurement.

PROPOSED ACT: Council Decision (non-legislative act).

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the Agreement on Government Procurement (GPA) **is the only legally binding agreement in the WTO on the subject of government procurement.** Its present version was negotiated in parallel with the Uruguay Round in 1994, and entered into force on 1 January 1996. The Parties to the 1994 GPA are: Armenia, Canada, European Union with respect to its 27 Member States, Hong Kong-China, Iceland, Israel, Japan, Korea, Liechtenstein, the Netherlands with respect to Aruba, Norway, Singapore, Switzerland, Chinese Taipei, and the United States.

The negotiations on the revision of the WTO Agreement on Government Procurement were launched in January 1999. The purpose of the negotiations was three-fold: (i) to improve and update the 1994 GPA in the light of developments in information technology and procurement methods; (ii) to extend the coverage of the 1994 GPA; and (iii) to eliminate remaining discriminatory measures.

On 15 December 2011, GPA Parties reached a political agreement at Ministerial level on the outcomes of the negotiation. The political agreement was confirmed through the adoption of the Decision on the outcomes of the negotiations by the GPA Committee on 30 March 2012. By means of the Decision on the outcome of the Negotiations, which includes the Protocol Amending the Agreement on Government Procurement, GPA Parties authenticated the text of the Protocol and opened it for acceptance by the Parties to the 1994 GPA.

The Protocol should be concluded on behalf of the Union.

IMPACT ASSESSMENT: no impact assessment was undertaken.

LEGAL BASIS: Article 207(4) first subparagraph, in conjunction with Article 218(6)(a)(v) and Article 218(7) of the Treaty on the Functioning of the European Union.

CONTENT: the Commission proposes that the Council **conclude the Protocol amending the Agreement on Government Procurement** on behalf of the European Union.

1) The revised GPA: the revised GPA text provides for a **higher level of clarity and transparency** and guarantees **equal footing** in procurement procedures for suppliers, supplies and services originating in GPA Parties. To that end, the EU successfully sought to re-structure the text of the revised GPA in order to follow the sequential order of a procurement procedure and to bring the text closer to the EU procurement directives.

Furthermore, to allow for an effective opening of the procurement markets of the other GPA Parties, the revised text entails **new provisions that constitute a significant improvement of the conditions of participation of the EU suppliers abroad.**

These **new elements** include the following:

- the GPA Parties will be required to set up a centralised electronic database which is free of charge and which will include procurement notices published by Ministries and other central procurement entities;

- the revised GPA contains clearer rules on the selection of suppliers, allowing for more competition;

- the revision of the GPA also leads to the introduction of electronic procurement ;

- the revised text includes new provisions for developing countries wishing to join the Agreement.

The EU has ensured:

- that the current obligations regarding statistical reporting are more simple and flexible. This includes a limitation on the amount of data to be provided, the option of providing estimates, and the introduction of a waiver of the obligations for the Parties (like the EU) who maintain a centralised database;

- that the Agreement explicitly provides for a simplified procedure for the notification by a Party of rectifications and modifications of its Annexes to Appendix I (coverage).

2) **The Coverage:** the negotiations resulted in a **significant extension of the coverage of the GPA.** According WTO estimates, the additions to the coverage amount to EUR 80 billion. **The EU secured roughly EUR 30 billion of additional market access opportunities for European companies.** Market access has been expanded through:

- the addition of more than 200 contracting entities, both on central and sub-central levels;

- greater coverage of goods through deletion or reduction in scope of existing derogations and through additions of goods on the non-sensitive defence procurement list;

- expanded coverage of services to varying degrees by almost all Parties. All Parties now offer the entire category of construction services (works);

- downwards revision of thresholds from which the GPA discipline will be applicable (by some Parties);

- new coverage for contractual arrangements such as works concessions/build-operate-transfer contracts/private finance initiative;

- the removal of certain discriminatory provisions, such as offsets and Buy National rules that some Parties maintained under the 1994 GPA.

BUDGETARY IMPLICATIONS: the proposal has no implications for the EU budget.