



Brussels, 14.10.2015  
COM(2015) 501 final

2015/0240 (NLE)

Proposal for a

## **COUNCIL DECISION**

**establishing the position to be taken on behalf of the European Union within the Council for Trade in Services of the World Trade Organization to seek approval for preferential treatment going beyond market access to be unilaterally offered by the European Union to services and services suppliers of Least-Developed Countries on the basis of the LDC Services Waiver**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

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

The proposed Council Decision is made in the context of the **WTO Services Waiver for Least Developed Countries** (LDCs). The Services Waiver<sup>1</sup> allows WTO Members to grant unilateral preferences on services to the LDCs and it requires acceptance by the Council for Trade in Services (CTS) of the notified preferences granted with respect to measures other than those described in Article XVI of the GATS (market access).

On 23 July 2015 the Commission adopted a proposal for a Council Decision<sup>2</sup> establishing the position of the Union within the Council for Trade in Services of the WTO on the acceptance of preferences notified by other WTO Members as regards services and service suppliers of Least-Developed Countries other than those described in Article XVI of the GATS (market access).

The proposed **Council Decision** establishes the position of the European Union in the CTS to be in a position to **seek approval with regard to the preferential treatment going beyond market access** the European Union intends to grant unilaterally to services and services suppliers of LDCs.

The intended treatment to be accorded to LDCs was prepared on the basis of an approach expressed to WTO Members at a high-level meeting of the CTS on 5 February 2015 and a signal of intention to notify transmitted to the WTO on 30 July 2015.

- **Consistency with existing policy provisions in the policy area and other Union policies**

At the Ninth WTO Ministerial Conference in Bali, which took place on 3-6 December 2013, the European Union joined the consensus on the adoption of a Decision on the operationalization of a Services Waiver for LDCs<sup>3</sup>. The EU is committed to the success of the upcoming Tenth Ministerial Conference of the WTO in Nairobi in December 2015 and to moving decisively forward the Doha Development Round negotiations and the implementation of the Bali outcome package, including the LDC elements. The proposed Council Decision is part of this Bali implementation process.

Supporting the economic advancement of LDCs, through the preferences to be granted under the Waiver will contribute to the achievement of the objectives of the Treaty stating that the EU shall contribute to the harmonious development of world trade, define and pursue common policies to foster the sustainable development of developing countries<sup>4</sup>. This proposed notification will also be conducive to conclude a part of the Doha Development Agenda negotiations on services.

### 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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<sup>1</sup> Waivers are permissions granted by the WTO General Council/Ministerial Conference to derogate temporarily from certain WTO obligations which are otherwise applicable.

<sup>2</sup> COM (2015)356.

<sup>3</sup> WT/L/918.

<sup>4</sup> Article 205 and 206 of the TFEU and Article 21 of the TEU.

The legal bases for the proposed Council Decision are Articles 91, 100 and the first subparagraph of Article 207(4), in conjunction with Article 218(9) of the Treaty on the functioning of the European Union (TFEU).

Article 218(9) of the TFEU provides that when an act having legal effects needs to be adopted in a body set up by an international agreement, the Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision establishing the position to be adopted on the Union's behalf with respect to the adoption of this act in this body. While the notification of preferences that the Union intends to grant to LDCs does not have legal effects, it would include commitments going beyond market access which require approval in the CTS, for which this Article 218(9) Decision is appropriate. The envisaged preferences relate to obligations under the General Agreement on Trade in Services and may concern all service sectors, including transport services. Therefore, the proposed Decision falls within the scope of Articles 91, 100 and 207(4), first subparagraph, of the TFEU.

### **3. BUDGETARY IMPLICATIONS**

The proposal has no budgetary implications.

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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 of Articles 91, 100 and 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) Article IX of the Marrakesh Agreement establishing the World Trade Organization (WTO) sets out the procedures for the granting of waivers concerning the Multilateral Trade Agreements in Annex 1A, 1B or 1C to that Agreements and their annexes.
- (2) A waiver was requested whereby the WTO Members would be enabled to grant preferential treatment to services and service suppliers of Least-Developed Country Members without according the same treatment to like services and service suppliers of all other WTO Members by exceptionally derogating from the obligation under paragraph 1 of Article II of the General Agreement on Trade in Services (GATS). The Council adopted the position of the Union in support of the waiver by Council Decision of 14 December 2011 (2012/8/EU).
- (3) The WTO Ministerial Decision of 17 December 2011 authorising WTO Members to grant such preferential treatment to services and service suppliers of Least-Developed Country Members for a period of 15 years, sets forth in paragraphs 1 and 2 (i) that Members according preferential treatment pursuant to this waiver shall submit a notification to the Council for Trade in Services (CTS) and (ii) that preferential treatment with respect to the application of measures other than those described in Article XVI of the GATS is subject to approval by the CTS in accordance with its procedures. The requirement of CTS approval with regard to those measures was restated in paragraph 1.3 of the WTO Ministerial Decision of 7 December 2013.
- (4) By Council Decision of [•] 2015 [•] the position of the Union to accept preferences going beyond Article XVI GATS granted by other WTO Members to the services and service suppliers of Least-Developed Country Members was established.
- (5) In addition to the acceptance of preferences granted by other WTO Members, it is in the interest of the development objectives of the European Union and is conducive to conclude a part of the Doha Development Agenda negotiations on services that the European Union seeks approval for the preferential treatment beyond market access that it intends to grant to the services and service suppliers of Least-Developed

Country Members, with a special consideration of preferences granted regarding temporary stay of natural persons for the provision of services to create incentives for fulfilling readmission obligations under international law, implementing existing readmission agreements and concluding new ones, provided Least-Developed Country Members cooperate with the European Union on migration management,

HAS ADOPTED THIS DECISION:

*Article 1*

The Union will seek approval within the Council for Trade in Services of the WTO with regard to the preferential treatment that the Union intends to grant to services and service suppliers of Least-Developed Countries and specifically with regard to those preferences going beyond market access as set out in the Addendum to this Decision and in accordance with the WTO Ministerial Decisions of 17 December 2011 (WT/L/847) and 7 December 2013 (WT/L/918).

This position shall be expressed by the European Commission.

*Article 2*

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council  
The President*