COUNCIL DECISION

of 21 October 2014

establishing the position to be adopted on behalf of the European Union within the Committee on Government Procurement on the withdrawal of the Union objection to the delisting of three entities from Japan's Annex 3 to Appendix I to the Agreement on Government Procurement

(2014/741/EU)

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 29 August 2001 the notification of Japan under paragraph 6(b) of Article XXIV of the WTO Agreement on Government Procurement ('the 1994 GPA') on the delisting of East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company ('the three railway companies') from Japan's Annex 3 to Appendix I was circulated to the Parties to the 1994 GPA.

(2) On 1 October 2001 the Union objected, pursuant to paragraph 6(b) of Article XXIV of the 1994 GPA, to the proposed modifications as notified by Japan in order to examine thoroughly the reasons for the intended delisting of the three railway companies as some concerns were raised.

(3) Despite the consultations which took place between the Union and Japan, and unlike all other Parties that objected, the Union did not withdraw its objection.

(4) During the revision of the 1994 GPA, the Union's objection was taken into account. Japan did not list the three railway companies in Japan's Annex 3 to Appendix I, but included a note specifying that the three railway companies are deemed to be included in Japan's Annex 3 until such time as the Union withdraws its objection against the delisting of those companies.

(5) In the framework of the scoping exercise for an EU-Japan free trade agreement and against the background of the negotiations on government procurement relating to that agreement, the Union expressed its readiness to withdraw its objection to the delisting of the three railway companies, in line with the approach adopted by the Council on the Roadmap on railways and urban transport and without prejudice to any assessment of the level of competition on the Japanese railway market.

(6) In the light of the confirmation by Japan of its intention to significantly revise the terms of application of the operational safety clause in note 4 to Japan's Annex 2 and note 3(a) to Japan's Annex 3 to Appendix I and to promote transparent and non-discriminatory procurement practices by the three railway companies, the Union should withdraw its objection to the delisting of those companies.

(7) The withdrawal of the objection should be without prejudice to the Union's position in the Committee on Government Procurement on the decision on indicative criteria that demonstrate the effective elimination of government control or influence over an entity's covered procurement, pursuant to paragraph 8 of Article XIX of the revised GPA, in particular whether government control or influence is effectively eliminated where the entities concerned are not operating in a competitive environment.

(8) It is appropriate to establish the position to be adopted on the Union's behalf within the Committee on Government Procurement on the withdrawal of the objection,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the European Union within the Committee on Government Procurement is that the Union shall withdraw the objection to the delisting of the East Japan Railway Company, Central Japan Railway Company and West Japan Railway Company from Japan's Annex 3 to Appendix I to the Agreement on Government Procurement.

Article 2

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

Done at Luxembourg, 21 October 2014.

For the Council
The President
S. GOZI