



Reference: **BC/OLC/24/5056.20**

The Office of the Legal Counsel of the African Union presents its compliments to the Permanent Mission of the Republic of Nigeria to the African Union in Addis Ababa and has the honour to refer to its **Note verbal 150/2020 dated 09 June 2020** demanding the immediate review of the opinion of the Office of the Legal of the AUC, shared at the meeting of the Ministerial Committee on candidatures held at the level of the Ambassadors on 04th June 2020.

I. BACKGROUND OF FACTS

1. In July 2019, the Executive Council during its Thirty Fifth Ordinary Session held in Niamey, Niger **through Ex CI 1072 (XXXV)** called on the AU Member States to consider presenting candidates to the AU Ministerial Committee on Candidatures in the International System for the position of WTO Director General by 30 November 2019, with a view to endorse one candidate during the February 2020 Ordinary Session.
2. Therefore, Benin, Egypt and Nigeria submitted their candidatures namely, **Mr Eloi Laourou, Mr Abdulhameed Mamdouh and Amb Yunov Frederick Agah**.
3. During the February 2020 Summit, the three candidates were considered. However, due to the lack of Consensus to agree on one suitable candidate during the February 2020 Summit, the Executive Council through decision **Ex CI 1090 (XXXVI)** recalled the **Ex CI Dec 1072 (XXXV)** and endorsed respectively the candidates from Benin, Egypt and Nigeria as short listed for the post of the Director General of the WTO (the names of the candidates were incorporated in the Report of the Committee on International Candidatures presented to the Executive Council). Moreover, it requested the Ministerial Committee on African Candidatures within the International System to consider the matter and report to the Executive Council's 37th Ordinary Session with a view to agreeing on a single candidate.
4. In order to continue the process, the Committee, at Ambassadorial Level organized different meetings to facilitate the work of the Ministerial Committee with the view to have one single candidate for the post of WTO Director General, in accordance with **Ex CI Dec 1090, (XXXVI)**.
5. During that meeting the members of the Committee were informed by the Secretariat that the Republic of Nigeria submitted a Note Verbal on **04 June 2020** informing the esteemed members of the Committee on candidatures that the candidature of **Amb Amb Yunov Frederick Agah** has been withdrawn and replaced by the candidature of **Dr Ngosi OKONJO-IWEALE**.
6. From that information, the Office of the Legal Counsel was requested to advise whether the new submission of Dr Ngosi OKONJO-IWEALE is in line with the Executive Council Decision, **Ex CI Dec 1090, (XXXVI)**.

7. Therefore, based on that background of facts, the office of the Legal Counsel is hereby providing to the Permanent Mission of the Republic of Nigeria the legal basis that surrounded its advice during the meeting of **04 June 2020**.

II. APPLICABLE LAW

Rule 11 Submission of candidatures

Pursuant to Rule 11 of the Rules of Procedure of the Committee on Candidatures within international System, the submission of the candidates shall be in line with the following conditions as stipulated below:

1. All candidatures shall be submitted to the Committee, through the AU Commission (The Political Affairs Department). The Political Affairs Department should acknowledge receipt containing the date and the stamp of submission;
2. Candidatures shall be submitted to the Commission at least two (2) months prior to the Sessions of the Executive Council, which shall consider them. The submission shall be accompanied by relevant information related to the submitted candidatures, including the nature of each post, date and place of elections.
3. In accordance with paragraph 2 above, the Committee may accept candidatures submitted after the deadline under the following conditions:
 - a) No other candidatures for the position have been submitted in the prescribed time in accordance with paragraph,
 - b) The submission of candidatures has been closed.
 - c) There are more vacancies reserved for Africa than the submissions received.
4. Member States shall submit the names of their Candidates with accompanying Curricula Vitae (CVs) of at most three (3) pages, in at least two (2) Working languages of the AU and where applicable a personal statement outlining the vision and programme of the candidate.
5. Upon receipt of the nominations and accompanying CVs, the Commission shall circulate them to all Member States for information.

8. Rule 12 Admissibility of candidatures

1. In accordance with decision CM/Oec.650 (LXXV) of the Seventy-Fifth Ordinary Session of the Council of Ministers, held in Addis Ababa, Ethiopia in March 2002, candidatures that are not submitted in accordance with Rule 11 (1), (2), (3), (4) and (5) above shall not be included on the Agenda of the Committee.
2. By virtue of Article 4 (p) of the Constitutive Act, candidatures of States or nationals of states under suspension shall not be considered.

9. Rule 13 consideration of Candidatures

1. Candidatures shall be considered, when elections are organized, between the ordinary session of the Executive Council on the margins of which the Committee is meeting and the following session.
2. In order to increase chances of winning, the Committee may decide to permit the early consideration of certain candidatures to allow the candidates and Member States to benefit from a longer period of time to campaign at regional, continental and international level, provided that all Member States are informed by the Commission accordingly.
3. The early consideration shall be limited to heads of institutions positions or to strategic positions. However, the early consideration shall not exceed a period of three (03) years.
4. There shall be early consideration under paragraph 2 above provided:
 - a) a request for early consideration and the reasons justifying the statement thereof are contained in the submission;
 - b) the Commission will have informed all Member States accordingly.

Rule 14 Recommendations on candidatures

1. The Committee shall take into consideration the pertinent Decisions of the Union as well as the following criteria in considering the candidatures:
 - a) Candidatures qualification, intellectual qualities and experience;
 - b) Candidates international repute and recognition;
 - c) Equal geographical representation;
 - d) Collective interest of the African Union.
2. Notwithstanding the provisions of paragraph 1 of this rule, the Committee shall have the right to recommend the withholding of support for any candidature, if in its opinion it would be in the best interest of the Union.

10. Rule 15 Decision -making

1. The Committee shall be answerable to the Executive Council of the African Union. Its recommendations shall be binding after endorsement by the Executive Council.
2. The Committee shall take its decisions by consensus or, failing which by a simple Majority of the members of the Committee eligible to vote.
3. Decisions of the Executive Council on the recommendations of the Committee on a particular candidature shall be binding on all Member States.

11. Rule 16 Sanctions for non-compliance with the decision

Member state that fail to comply with the decisions of the Executive Council on candidatures for elective posts within the international system, in addition to the sanctions provided for in Article 23 of the Constitutive Act of the African union may also be subject to a suspension of endorsement of their candidatures for a period of five (5) years

III. ANALYSIS


12. Against the above mentioned Rules, the new submission of the Republic of Nigeria does not fulfil the requirement in accordance with Rule (11) paras 1, 2 and 3, Rule 12, and 15 (3)
13. Further, the new submission of the Republic of Nigeria is not in line with the Council Decision **Ex CI 1072(XXXV)** *through which the Executive Council called on the AU Member States to consider presenting candidates to the AU Ministerial Committee on Candidatures in the International System for the position of WTO Director General by 30 November 2019, with a view to endorse one candidate during the February 2020 Ordinary Session, therefore, it is in violation of Rule 15.*
14. Additionally, the same submission is not also in line with the Executive Council Decision **Ex CI 1090 (XXXVI)** *that recalled the Ex CI Dec 1072 (XXXV) and endorsed respectively the candidates from Benin, Egypt and Nigeria as the short listed candidates to the post of the Director General of the WTO and requested the Ministerial Committee on African Candidatures within the International System to consider the matter and report to the Executive Council's 37th Ordinary Session with a view to agreeing on a single candidate.*
15. Even through the Executive Council Decision **Ex CI 1090 (XXXVI)** does not include the names of the Candidates but they were included in the Committee's Report to the Ex.Cl. Also, it has to be recalled that the endorsement was not for the three countries but for the submitted candidates from those three countries namely, **Mr Eloi Laourou** from Benin, **Mr Abdulhameed Mamdouh** from Egypt and **Amb Yunov Frederick Agah** from Nigeria.
16. Despite the fact that the new nomination of the Republic of Nigeria is not in line with the Decisions of the Executive Council (**Ex CI Dec 1072 (XXXV)**, **Ex CI 1090 (XXXVI)**) and the Rules of Procedure of the Committee on Candidatures, **it is a recognized principle of International Law that a sovereign state has the right to substitute and replace a nomination of its citizens as it may wish for a position. However, that sovereign right does not endow that State any right to change existing Rules, relevant Decisions of the Executive Council and Decisions of the other Policy Organs of the Union. A Decision of the Executive Council should only be changed by another Decision of the Council not by any Member State and a Decision of the Assembly should be changed by a decision of the Assembly not by a Member State.**
17. Furthermore, it is to be recalled that during the Thirty Third (33rd) Ordinary Session of the Assembly held in Addis Ababa- Ethiopia in February 2020, the

Assembly, through decision 795(XXXIII) called the Member States to uphold the Rules of Procedure of the Ministerial Committee on candidatures within the International System and demonstrate a sense of solidarity and pan-Africanism predicated on consultations and consensus, by speaking one voice in the International arena.

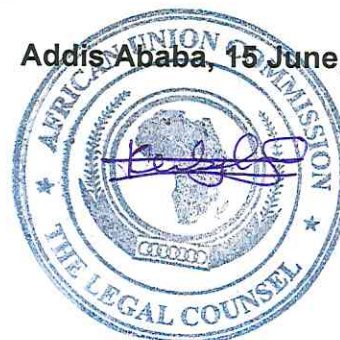
18. However, due to the stepping down of the current Director General effective on 31 August 2020 and to avoid a leadership vacuum that may affect the credibility of the WTO, members were requested to submit their candidates from **08 June to 08 July 2020**.

IV. CONCLUSION

19. Against the above, the new submission of Dr **Ngosi OKONJO-IWEALE** by the Republic of Nigeria is not in line with Rule (11) 1, 2 and 3, Rule 12 and Rule 15(3) of the Rules of procedure of the Committee on Candidatures within the International System as well as the Council's Decisions **Ex CI 1072(XXXV)**, **Ex CI Dec 1090 (XXXVI)** and **Assembly Dec 795(XXXIII)**.
20. Henceforth, the office of the Legal Counsel is upholding its legal advice provided to the Esteemed Members of the Committee on Candidatures during its last meeting held on 04 June 2020 with reference to the Executive Council Decision (Ex CI Dec 1090 XXXVI) that remains as is unless changed by another Executive Council decision.

The office of the Legal Counsel of the Union Commission avails itself of this opportunity to renew to the Permanent Mission of the Republic of Nigeria to the African Union, the assurances of its highest consideration. 

Addis Ababa, 15 June, 2020



To: **The Embassy of Republic of Nigeria**
Addis Ababa
Members of the Ministerial Committee on Candidatures
Department of Political Affairs
Department of Trade and Industry