

*This **document** is the European Union's proposal for services, investment and e-commerce text. It was tabled for discussion with the US in the negotiating round of 12 -17 July 2015 and made public on 31 July 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

DISCLAIMER: The EU reserves the right to make subsequent modifications to this text and to complement its proposals at a later stage, by modifying, supplementing or withdrawing all, or any part, at any time.

Transatlantic Trade and Investment Partnership

TRADE IN SERVICES, INVESTMENT AND E-COMMERCE

Contents

CHAPTER I - GENERAL PROVISIONS	2
CHAPTER II - INVESTMENT	5
CHAPTER III - CROSS BORDER SUPPLY OF SERVICES.....	11
CHAPTER IV - ENTRY AND TEMPORARY STAY OF NATURAL PERSONS FOR BUSINESS PURPOSES	14
CHAPTER V - REGULATORY FRAMEWORK	16
CHAPTER VI - ELECTRONIC COMMERCE	47
CHAPTER VII - EXCEPTIONS	51

CHAPTER I - GENERAL PROVISIONS

Article 1-1

Objective, coverage and definitions

1. The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services, for the liberalisation of investment and for facilitation of e-commerce. Consistent with the provisions of this Title, each Party retains the right to adopt, maintain and enforce measures necessary to pursue legitimate policy objectives such as protecting society, the environment and public health, consumer protection, ensuring the integrity and stability of the financial system, promoting public security and safety, and promoting and protecting cultural diversity.¹

2. This Title shall not apply to measures affecting natural person seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Nothing in this Title shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits² accruing to any Party under the terms of this Title and its Annexes.

3. For purposes of this Title:

- (a) a ‘natural person of the EU’ means a national of one of the Member States of the European Union according to its legislation³ and a ‘natural person of the US’ means a national of the US according to its legislation;
- (b) ‘juridical person’ means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (c) a ‘juridical person of the EU’ or a ‘juridical person of the US’ means a juridical person set up in accordance with the laws of a Member State of the European Union or of the

¹ EU reserves the right to make further proposals on the right to regulate in light of further developments relating to investment protection.

² The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

³ The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen’s passport.

US and engaged in substantive business operations⁴ in the territory of the EU or of the US, respectively;

- (d) Notwithstanding the preceding paragraph, shipping companies established outside the European Union or the US and controlled by nationals of a Member State of the European Union or of the US, respectively, shall also be beneficiaries of the provisions of this Title, with the exception of Chapter II Section (2) [Investment Protection]⁵ if their vessels are registered in accordance with their respective legislation, in that Member State or in the US and fly the flag of a Member State or of the US;
- (e) an ‘enterprise’ means a juridical person, branch or representative office set up through establishment, as defined under this article;
- (f) ‘subsidiary’ of a juridical person of a Party means a juridical person which is effectively controlled by another juridical person of that Party⁶;
- (g) ‘establishment’ means the setting up, including the acquisition⁷ of, a juridical person and/or creation of a branch or a representative office in the US or in the EU respectively;
- (h) ‘economic activities’ means activities of an industrial, commercial and professional character and activities of craftsmen except activities performed in the exercise of governmental authority;
- (i) ‘operation’ of an investment means the conduct, management, maintenance, use, enjoyment, sale or other disposal of the investment by an investor of one Party in the territory of the other Party;
- (j) ‘services’ means any service in any sector except services supplied in the exercise of governmental authority;
- (k) ‘services and activities performed in the exercise of governmental authority’ means services or activities which are performed neither on a commercial basis nor in competition with one or more economic operators;
- (l) ‘cross-border supply of services’ means the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party
 - (ii) in the territory of a Party to the service consumer of the other Party;

⁴ In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU understands that the concept of “effective and continuous link” with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of “substantive business operations”. Accordingly, for a juridical person set up in accordance with the laws of the US and having only its registered office or central administration in the territory of the US, the EU shall only extend the benefits of this agreement if that juridical person possesses an effective and continuous economic link with the territory of the US.

⁵ This provision shall be reviewed in light of further developments relating to investment protection.

⁶ A juridical person is controlled by another juridical person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.

⁷ The term “acquisition” shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

- (m) a ‘service supplier’ of a Party means any natural or juridical person of a Party that seeks to supply or supplies a service;
- (n) a ‘measure’ means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (o) ‘measures adopted or maintained by a Party’ means measures taken by:
 - (i) governments and authorities at all levels; and
 - (ii) non-governmental bodies in the exercise of powers delegated by governments or authorities at all levels;
- (q) an ‘investor’ means a natural person or a juridical person of a Party that seeks to make, is making or has already made an investment in the territory of the other Party⁸.

For greater certainty, “territory of a Party” shall include the exclusive economic zone and the continental shelf, as provided in the *United Nations Convention on the Law of the Sea* of 10 December 1982.

⁸ This provision shall be reviewed in light of further developments relating to investment protection.

CHAPTER II - INVESTMENT

Section 1 Liberalisation of Investments⁹

Article 2-1 Scope

1. This Section applies to measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of an investment by an investor of the other Party in its territory.
2. The provisions of this Section shall not apply to audio-visual services.
3. Government procurement shall be dealt with by Chapter [X (on public procurement).] Nothing in this Section shall be construed to limit the obligations of the Parties under Chapter X on public procurement or to impose any additional obligation with respect to government procurement.
4. Subsidies shall be dealt with by Chapter [X (on competition and state aid)] and the provisions of this Section shall not apply to subsidies granted by the Parties.

Article 2-2 Market Access

In sectors or subsectors where market access commitments are undertaken, neither Party shall adopt or maintain with regards to market access through establishment or operation of an enterprise, either on the basis of its entire territory or on the basis of a territorial sub-division, measures that impose:

- (a) limitations on the number of enterprises whether in the form of numerical quotas, monopolies, exclusive rights or other requirements relating to establishment such as economic needs tests¹⁰;
- (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test¹¹;
- (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test¹²;

⁹ The provisions of this section shall be reviewed in light of further developments relating to investment protection.

¹⁰ Subparagraphs (a), (b) and (c) do not cover measures taken in order to limit the production of an agricultural or fishing product.

¹¹ Subparagraphs (a), (b) and (c) do not cover measures taken in order to limit the production of an agricultural or fishing product.

¹² Subparagraphs (a), (b) and (c) do not cover measures taken in order to limit the production of an agricultural product or fishing product.

- (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;
- (e) measures which restrict or require specific types of legal entity or joint ventures through which an investor of the other Party may perform an economic activity;
- (f) limitations on the total number of natural persons, that may be employed in a particular sector or that an investor may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test.

Article 2-3 National Treatment

1. Each Party shall accord to investors of the other Party and to their investments, as regards the establishment of an enterprise in its territory, treatment no less favourable than the treatment it accords, in like situations, to its own investors and their investments.
2. Each Party shall accord to investors of the other Party and to their investments, as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to its own investors and investments.

Article 2-4 Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of the other Party and to their investments as regards the establishment of an enterprise in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors and investments of any non-Party.
2. Each Party shall accord to investors of the other Party and to their investments as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors and investments of any non-Party.
3. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to the investors of the other Party the benefit of any treatment resulting from:
 - (a) [reference to double taxation agreements in case not covered by horizontal provisions in the agreement]
 - (b) measures providing for the recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in Services or its Annex on Financial Services.
4. For greater certainty the “treatment” referred to in Paragraphs 1, and 2 does not include investor-to-state dispute settlement procedures provided for in other international investment treaties and other trade agreements. The substantive provisions of such agreements which concern the establishment of an enterprise or the operation of an investment do not in

themselves constitute "treatment" as referred to in Paragraphs 1 and 2, and thus cannot give rise to a breach of this article absent measures adopted pursuant to such provisions.

Article 2-5 **Senior Management and Boards of Directors**

Neither Party may require that an enterprise appoints to senior management or the board of directors positions natural persons of any particular nationality.

Article 2-6 **Performance Requirements**

1. Neither Party may impose, or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment of all enterprises or the operation of all investments in its territory to:
 - (a) export a given level or percentage of goods or services;
 - (b) achieve a given level or percentage of domestic content;
 - (c) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural or juridical persons in its territory;
 - (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
 - (e) restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
 - (f) transfer technology, a production process or other proprietary knowledge to a natural or juridical person in its territory;
 - (g) supply exclusively from the territory of the Party a good produced or a service provided by the investment to a specific regional or world market;
 - (h) to locate the headquarters of that investor for a specific region or the world market in its territory;
 - (i) to hire a given number or percentage of its nationals;
 - (j) to achieve a given level or value of research and development in its territory;

- (k) to supply one or more of the goods that the investor produces or the services that the investor provides to a specific region or the world market, exclusively from the territory of the former Party; or
 - (l) to restrict the exportation or sale for export;
2. Notwithstanding paragraph 4 of Art 2-1 (Scope) neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment of an enterprise or the operation of an investment in its territory, on compliance with any of the following requirements:
- (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
 - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
 - (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings; or
 - (e) to restrict the exportation or sale for export.
3. Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with investments in its territory, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.
4. Subparagraph 1(f) does not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws.
5. The provisions of:
- (a) Subparagraphs 1(a), (b) and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programs;
 - (b) This article does not apply to procurement by a Party or a State Enterprise for goods and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of goods and services for commercial sale;

- (c) For greater certainty, subparagraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
6. Notwithstanding Article X (Reservations and Exceptions), a Party shall neither impose nor maintain any measure inconsistently with its obligations under the WTO Agreement even if such measure has been scheduled by that Party in Annex [X].

Article 2-7 Reservations and Exceptions

1. Articles X paragraph 1 (National Treatment), X (Most Favoured Nation Treatment), X (Senior Management and Board of Directors), X (Performance Requirements), do not apply to:
- (a) any existing non-conforming measure that is maintained by a Party at the level of:
 - (i) the European Union, as set out in its Annex I;
 - (ii) a national government, as set out by that Party in its Annex I;
 - (iii) regional government, as set out by that Party in its Annex I; or
 - (iv) a local government.
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X paragraph 1 (National Treatment), X (Most Favoured Nation Treatment), X (Performance Requirements), or X (Senior Management and Board of Directors).
2. Articles X paragraph 1 (National Treatment), X (Most Favoured Nation Treatment), X (Performance Requirements), X (Senior Management and Board of Directors), do not apply to measures that a Party adopts or maintains with respect to sectors or subsectors as set out in its Annex II.
3. Notwithstanding paragraph 2 of Article X (National Treatment), a Party may adopt or maintain any measure affecting the operation of an enterprise that is not inconsistent with its Annex I or to Annex II, where such measure is:
- (a) a measure that is adopted before the entry into force of this Agreement;
 - (b) a measure referred to in sub-paragraph (a) that is being continued, renewed or amended after the entry into force of this Agreement, provided the measure is no less consistent with paragraph 2 of Article X after being continued, replaced or amended than the measure as it existed prior to its continuation, replacement or amendment; or

(c) a measure covered under its Annex II that is adopted after the entry into force of this agreement and does not fall within sub-paragraph (a) or (b), provided it is not applied in respect of, or in a way that causes loss or damage to, investments made in the territory of the Party before the entry into force of such measure.

4. Article X (Market Access) does not apply to:

- (a) any existing measure that is maintained by a Party at the level of a local government; the continuation or prompt renewal of such a non-conforming measure; or an amendment to such a measure to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment with Article X (Market Access).
- (b) any measure that a Party adopts or maintains with respect to committed sectors or subsectors as set out in its Annex III.

Article 2-8 Review

1. With a view to progressively liberalising investment conditions, the Parties shall [X] years after the entry into force of this Agreement and at regular intervals thereafter, review the investment legal framework¹² and the investment environment, consistent with their commitments in international agreements.
2. In the context of the review referred to in paragraph 1, the Parties shall assess any obstacles to investment that have been encountered. As a result of such review, the [body defined by the agreement] may decide to amend the relevant Annexes with specific commitments and reservations.

Section 2 Investment Protection

[placeholder]

In view of the on-going reflection on investment protection, the EU proposal does not include provisions in this area, but only a placeholder

¹² This includes this Chapter and Annexes XXX.

CHAPTER III - CROSS BORDER SUPPLY OF SERVICES

Article 3-1 Scope

1. This Chapter applies to measures of the Parties affecting the cross-border supply of services in all services sectors.
2. The provisions of this Chapter shall not apply to audio-visual services.
3. Subsidies shall be dealt with by Chapter [X (on competition and state aid)] and the provisions of this chapter shall not apply to subsidies granted by the Parties.
4. Government procurement shall be dealt with by Chapter [X (on public procurement).] and nothing in this Chapter shall be construed to limit the obligations of the Parties under Chapter X on public procurement or to impose any additional obligation with respect to government procurement.

Article 3-2 Market Access

In sectors or subsectors where market access commitments are undertaken, neither Party shall adopt or maintain with regards to market access through the cross-border supply of services, either on the basis of its entire territory or on the basis of a territorial sub-division, measures that impose:

- (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

Article 3-3 National Treatment¹³

1. Each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less

¹³ For greater certainty, Article 2-3 (National Treatment) shall also be interpreted in accordance with paragraphs 2, 3 and 4 with respect to economic activities performed through establishment.

favourable than the treatment it accords, in like situations, to its own services and services suppliers.

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.
4. Nothing in this article shall be construed to require any Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

Article 3-4 Most Favoured Nation Treatment

1. Each Party shall accord to shall grant to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than the treatment it accords, in like situations, to services and service suppliers of any non-Party.
2. Paragraph 1 shall not be construed to oblige a Party to extend to services and service suppliers of the other Party the benefit of any treatment resulting from:
 - (a) [reference to double taxation agreements in case not covered by horizontal provisions in the agreement]
 - (b) measures providing for the recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in Services or its Annex on Financial Services.

Article 3-5 Reservations and Exceptions

1. Articles X (National Treatment), X (Most Favoured Nation Treatment) do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at the level of:
 - (i) the European Union, as set out in its Annex I;
 - (ii) a national government, as set out by that Party in its Annex I;
 - (iii) regional government, as set out by that Party in its Annex I; or
 - (iv) a local government.

- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X (National Treatment), X (Most Favoured Nation Treatment).
2. Articles X (National Treatment), X (Most Favoured Nation Treatment) do not apply to measures that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Annex II.
3. Article X (Market Access) does not apply to:
- (a) any existing measure that is maintained by a Party at the level of a local government; the continuation or prompt renewal of such a non-conforming measure; or an amendment to such a measure to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment with Article X (Market Access).
 - (b) any measure that a Party adopts or maintains with respect to committed sectors or subsectors as set out in its Annex III.

Article 3-6 Review

1. With a view to further deepening liberalisation of cross border supply of services, the Parties shall [X] years after the entry into force of this Agreement and at regular intervals thereafter, review the remaining restrictions on the cross-border supply of services, consistent with their commitments in international agreements.
2. In the context of the review referred to in paragraph 1, the Parties shall assess any obstacles to the cross border supply of services that have been encountered. As a result of such review, the [body defined by the agreement] may decide to amend the relevant Annexes with specific commitments and reservations.

CHAPTER IV - ENTRY AND TEMPORARY STAY OF NATURAL PERSONS FOR BUSINESS PURPOSES

[The EU reserves the right to submit at a later stage an Appendix with additional provisions related to entry and temporary stay of natural persons for business purposes]

Article 4-1 Scope and definitions

1. This Chapter applies to measures of the Parties concerning the entry and temporary stay in their territories of categories of natural persons for business purposes as defined by Parties in their respective Annexes with commitments.

Article 4-2 Intra-corporate Transferees, Business Visitors for establishment purposes and personnel Engaged in Establishment

1. For every sector committed in accordance with Article X [market access commitments] of Chapter II Section 1 [liberalisation of investment] of this Title, and subject to any reservations listed in their schedules of commitments¹⁴, each Party
 - a) shall allow the entry and temporary stay of Intra-corporate Transferees for the EU and the US and Business Visitors for establishment Purposes for the EU or Personnel Engaged in Establishment for the US;
 - b) shall allow the employment in its territory of Intra-corporate Transferees of the other Party ; and
 - b) shall not maintain or adopt measures either on the basis of a regional subdivision or on the basis of its entire territory, which are defined as limitations on the total number of natural persons that an investor may employ as business visitors, Intra Corporate Transferees for the EU and the US and Business Visitors for establishment purposes for the EU or Personnel Engaged in Establishment for the US in a specific sector in the form of numerical quotas and as discriminatory limitations.
2. Notwithstanding paragraph 1, each Party shall not maintain or adopt Economic Needs Tests for Intra corporate-Transferees for the EU and the US and Business Visitors for establishment purposes for the EU or Personnel Engaged in Establishment for the US.

¹⁴ If a Party set out a reservation in Annex I, Annex II or Annex III, the reservation also constitutes a reservation to this article to the extent that the measure set out in or permitted by the reservation affects the treatment of a natural person for business purposes entering and temporary staying in the territory of the other Party.

Article 4-3
Service sellers and Services Salespersons

1. For every sector committed in accordance with Articles X or X [market access] of Chapters II Section 1 [liberalisation of investment] or III [cross-border] of this Title and subject to any reservations listed in their Annexes with commitments¹⁵ each Party
 - a) shall allow the entry and temporary stay of Business Sellers for the EU or Services Salespersons for the US for a period of up to ninety days in any twelve month period; and
 - b) shall not maintain or adopt measures either on the basis of a regional subdivision or on the basis of its entire territory, which are defined as limitations on the total number of Business Sellers for the EU or Services Salespersons for the US in a specific sector in the form of numerical quotas and as discriminatory limitations.

Article 4-4
Contractual Service Suppliers, Fashion Models and Speciality Occupations

1. The Parties reaffirm their respective obligations arising from their commitments under the General Agreement on Trade in Services with respect to the entry and temporary stay of Contractual Services Suppliers for the EU or Fashion Models and Specialty Occupations for the US.

¹⁵ If a Party set out a reservation in Annex I, Annex II or Annex III, the reservation also constitutes a reservation to this article to the extent that the measure set out in or permitted by the reservation affects the treatment of a natural person for business purposes entering and temporary staying in the territory of the other Party.

CHAPTER V - REGULATORY FRAMEWORK

SECTION I - DOMESTIC REGULATION

Article 5-1 Scope and Definitions

1. The following disciplines apply to measures by the Parties relating to licencing requirements and procedures, qualification requirements and procedures that affect:
 - (a) the cross-border supply of services;
 - (b) the supply of a service or pursuit of any other economic activity, by an enterprise that is an investment of the other Party, including the establishment of such an enterprise; and,
 - (c) the supply of a service through the temporary stay in their territory of categories of natural persons as defined in Article (X).
2. These disciplines shall apply only to sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply.
3. These disciplines do not apply to sectors as soon as a reservation is listed in accordance with Annexes (X), and (Y), (Z).
4. For the purpose of this Section,
 - (a) ‘Licencing requirements’ are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorisation to carry out the activities as defined in paragraph 1 (a) to (c).
 - (b) ‘Licencing procedures’ are administrative or procedural rules that a natural or a juridical person, seeking authorisation to carry out the activities as defined in paragraph 1 (a) to (c), including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licencing requirements.
 - (c) ‘Qualification requirements’ are substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service.
 - (d) ‘Qualification procedures’ are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service.
 - (e) ‘Competent authority’ is any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a decision concerning the

authorisation to supply a service, including through establishment or concerning the authorisation to establish in an economic activity other than services.

Article 5-2
Conditions for licencing and qualification

1. Each Party shall ensure that measures relating to licencing requirements and procedures, qualification requirements and procedures are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.
2. The criteria referred to in paragraph 1 shall be:
 - (a) proportionate to a legitimate public policy objective;
 - (b) clear and unambiguous;
 - (c) objective;
 - (d) pre-established;
 - (e) made public in advance;
 - (f) transparent and accessible.
3. An authorisation or a licence shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation or licence have been met.
4. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting the supply of a service or the the pursuit of any other economic activity. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.
5. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.
6. Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, each Party may take into account legitimate public policy objectives, including considerations of health, safety, consumer protection, the protection of the environment and the preservation of cultural heritage.

Article 5-3

Licencing and qualification procedures

1. Licencing and qualification procedures and formalities shall be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.
2. Licencing and qualification procedures and formalities shall be as simple as possible and shall not unduly complicate or delay the provision of the service or the pursuit of the economic activity. Any authorization fees¹⁶ which the applicants may incur from their application should be reasonable and proportionate to the cost of the authorisation procedures in question.
3. Each party shall ensure that the procedures used by, and the decisions of, the competent authority in the licencing or authorisation process are impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and not be accountable to any person supplying a service or pursuing an economic activity for which the licence or authorisation is required.
4. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.
5. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing of an application.
6. The competent authority shall, within a reasonable period of time after receipt of an application which it considers incomplete, inform the applicant, to the extent feasible identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.
7. Authenticated copies should be accepted, where possible, in place of original documents.
8. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.
9. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

¹⁶ Authorization fees do not include payments for auction, the use of natural resources, royalties, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

SECTION II - PROVISIONS OF GENERAL APPLICATION

Article 5-4

Transparency and disclosure of confidential information

1. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements which pertain to or affect this Agreement. Each Party shall also establish one or more enquiry points to provide specific information to investors and services suppliers of the other Party, upon request, on all such matters. The Parties shall notify each other enquiry points within 3 months after entry into force of this agreement. Enquiry points need not be depositories of laws and regulations.
2. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

SECTION III - MUTUAL RECOGNITION OF PROFESSIONAL QUALIFICATIONS

Article 5-5

Definitions

1. For the purpose of this Section:
 - (a) ‘jurisdiction’ means [US: the whole territory of the US covered by the agreement] and the territory of each of the Member States of the European Union, insofar as this Agreement applies in these territories in accordance with Article X (Geographical scope of application).
 - (b) ‘negotiating entity’ means a juridical person or body of a Party entitled or empowered to negotiate an agreement on the mutual recognition of professional qualifications (“MRA”);
 - (c) ‘professional experience’ means the effective and lawful practice of a professional service
 - (d) ‘professional qualifications’ mean the qualifications attested by evidence of formal qualification and/or professional experience;
 - (e) ‘relevant authority’ means an authority or body, designated pursuant to legislative, regulatory or administrative provisions to recognise qualifications and authorise the practice of a profession in a host jurisdiction; and

- (f) ‘regulated profession’ means a professional service, the exercise of which, including the use of a title or designation, is subject to the possession of specific qualifications, by virtue of legislative, regulatory or administrative provisions.

Article 5-6 Objectives and Scope

1. This Section establishes the framework to facilitate a fair, transparent and consistent regime for the mutual recognition of professional qualifications by the Parties and sets out the general conditions for the negotiation of MRAs.
2. This Section applies to professions which are regulated in each Party, including in all or some Member States of the European Union and as regards the United States in all or some states, the District of Columbia, Puerto Rico.
3. A Party shall not accord recognition in a manner that would constitute a means of discrimination in the application of its criteria for the authorisation, licensing or certification of a service supplier, or that would constitute a disguised restriction on trade in services.
4. A MRA adopted pursuant to this Section shall apply throughout the entire territory of the EU and the US.

Article 5-7 Negotiation of a MRA

1. The Parties shall encourage its Relevant Authorities or professional bodies, as appropriate, to develop and provide to the Committee on Mutual Recognition of Professional Qualifications (“MRA Committee”) joint recommendations on proposed MRAs.
2. A recommendation shall provide an assessment as to the compatibility of the respective licensing or qualification regimes and the intended approach for the negotiation of a MRA. In addition, it shall provide an assessment of the potential economic value of a MRA, on the basis of criteria such as the existing level of market openness, industry needs, and business opportunities, for example, the number of professionals likely to benefit from the MRA, the existence of other MRAs in the sector, and expected gains in terms of economic and business development.
3. In light of each Party’s consultations with its respective Relevant Authorities, the MRA Committee shall, within a reasonable period of time, review the recommendation with a view to ensuring its consistency with the requirements of this Section. If these requirements are satisfied, the MRA Committee shall establish the necessary steps to negotiate a draft MRA.
4. The negotiating entities shall thereafter pursue the negotiation, involving their respective Relevant Authorities, as needed, and submit a draft MRA text to the MRA Committee.

5. If in the view of the MRA Committee the MRA is consistent with the Agreement, the MRA Committee shall adopt the MRA by means of a decision.

**Article 5-8
Recognition**

1. The recognition of professional qualifications provided by a MRA shall allow the beneficiary to take up and pursue professional activities in the host jurisdiction, in accordance with the terms and conditions specified in the MRA.
2. If the professional qualifications of a service supplier in a Party are recognised by the other Party pursuant to a MRA, a Relevant Authority of the host jurisdiction shall accord to this service supplier treatment no less favourable than that accorded in like situations to a like service supplier whose professional qualifications have been certified or attested in the host Party's jurisdiction.
3. Recognition under a MRA cannot be conditioned upon:
 - (a) a service supplier meeting a citizenship or any form of residency requirement; or
 - (b) a service supplier's education, experience or training having been acquired in the host Party's jurisdiction.

**Article 5-9
Committee on Mutual Recognition of Professional Qualifications**

1. The Committee on Mutual Recognition of Professional Qualifications (MRA Committee), established under Article XX, and responsible for the implementation of Article X and X shall:
 - (a) be composed and co-chaired by the United States and the European Union;
 - (b) comprise of representatives of each Party which must be different from the Relevant Authorities or professional bodies referred to in Article X.3.1. The list of those representatives shall be communicated through an exchange of letters;
 - (c) meet within one year after this Agreement enters into force, and thereafter as necessary or as decided;
 - (d) determine its own rules of procedure;
 - (e) facilitate the exchange of information regarding laws, regulations, policies and practices concerning standards or criteria for the authorisation, licensing or certification of regulated professions;
 - (f) make publicly available information regarding the negotiation and implementation of MRAs;

- (g) report to the Joint Committee on the progress of the negotiation and implementation of MRAs;
- (h) as appropriate, provide information and complement the guidelines set out in the Annex X-A to this Section; and
- (i) have the possibility to take decisions in accordance with Art X.

Article 5-10
Guidelines for the negotiation and conclusion of MRAs

1. As part of the framework to achieve mutual recognition of qualifications, the Parties set out in Annex X-A non-binding guidelines with respect to the negotiation and conclusion of MRAs.

Article 5-11
Concluded MRAs

1. MRAs agreed in accordance with the principles set out in this Section and the non-binding guidelines set out in Annex X-A by the time the negotiations of this Agreement are finalised, are included in Annex X-B. Unless otherwise stipulated in the MRA, these MRAs enter into force together with the Agreement.
2. By derogation from paragraph 1, the Parties may decide on the provisional application of any MRA included in Annex X-B upon signature of the Agreement.

Article 5-12
Contact points

Each Party shall establish one or more contact points for the administration of this Section.

ANNEX X-A - GUIDELINES FOR MRAs

Definitions

For purposes of this Annex:

Adaptation period means a period of supervised practice, possibly accompanied by further training, of a regulated profession in the host jurisdiction under the responsibility of a qualified person. This period of supervised practice shall be subject to an assessment. The detailed rules governing the adaptation period, its assessment and the professional status of the person under supervision shall be set out, as appropriate, in the host jurisdiction's laws and regulations.

Aptitude test means a test limited to the professional knowledge of applicants, made by the Relevant Authority of a host jurisdiction with the aim of assessing the ability of applicants to pursue a regulated profession in that Party's host jurisdiction; and

Scope of practice means an activity or group of activities covered by a regulated profession.

Introduction

This Annex contains guidelines to provide practical guidance to facilitate the negotiation of MRAs with respect to regulated professions. These guidelines are non-binding and they do not modify or affect the rights and obligations of a Party under this Agreement.

The examples listed under the various sections of these guidelines are provided by way of illustration.

Form and Content of the MRA

This Annex sets out various issues that may be addressed in a negotiation and, if so agreed, included in final MRAs. It outlines some basic ideas on what might be required of foreign professionals seeking to benefit from a MRA.

1. Participants

The parties to the MRA should be clearly stated.

2. Purpose of the MRA

The purpose of the MRA should be clearly stated.

3. Scope of the MRA

The MRA should set out clearly:

- (a) the scope of the MRA, in terms of the specific professional titles and activities which it covers;
- (b) who is entitled to use the professional titles concerned;

- (c) whether the recognition mechanism is based on formal qualifications, a licence obtained in the jurisdiction of origin, or on some other requirement; and
- (d) whether the MRA covers temporary or permanent access to the profession concerned.

4. Mutual Recognition Provisions

The MRA should clearly specify the conditions to be met for the recognition of qualifications in each host jurisdiction and the level of equivalence agreed.

The following four-step process should be considered to simplify and facilitate the recognition of the qualifications.

Four-Step Process for the Recognition of Qualifications

Step One: Verification of Equivalency

Each negotiating entity should verify the overall equivalence of the scopes of practice or qualifications of the regulated profession in each Party's host jurisdiction.

The examination of qualifications should entail the collection of all relevant information pertaining to the scope of practice rights related to a legal competency to practice or to the qualifications required for a specific regulated profession in the respective jurisdictions.

Consequently, each negotiating entity should:

(a) identify activities or groups of activities covered by the scope of practice rights of the regulated profession; and

(b) identify the qualifications required in each host jurisdiction. These may include the following elements:

- (i) the minimum level of education required, for example, entry requirements, length of study, subjects studied;
- (ii) the minimum level of experience required, for example, location, length and conditions of practical training or supervised professional practice prior to licensing, or the framework of ethical and disciplinary standards;
- (iii) examinations passed, especially examinations of professional competency;
- (iv) the extent to which qualifications from one jurisdiction are recognised in the other jurisdiction; and,
- (v) the qualifications which the Relevant Authorities in each host jurisdiction are prepared to recognise, for instance, by listing particular diplomas or certificates issued, or by reference to particular minimum requirements to be certified by the Relevant Authorities of the jurisdiction of origin, including whether the possession of a certain level of qualification would allow recognition for some activities of the scope of practice but not others (level and length of education, major educational focuses, overall subjects and areas).

There is an overall equivalence between the scope of practice rights or the qualifications of the regulated profession if there are no substantial differences in this regard between jurisdictions.

Step Two: Evaluation of Substantial Differences

There exists a substantial difference in the scope of qualifications required to exercise a regulated profession, in cases of:

- (a) important differences in the essential knowledge; or
- (b) significant differences in the duration or content of the training between the host jurisdictions.

There exists a substantial difference in the scope of practice if:

- (a) one or more professional activities do not form part of the corresponding profession in the jurisdiction of origin;
- (b) these activities are subject to specific training in the host jurisdiction; and,
- (c) the training for these activities in the host jurisdiction covers substantially different matters from those covered by the applicant's qualification.

Step Three: Compensatory Measures

If each negotiating entity determines that there is a substantial difference in the scope of practice rights or of formal qualifications between the host jurisdictions, they may determine compensatory measures to bridge the gap.

Compensatory measures should be proportionate to the substantial difference which they seek to address. Each negotiating entity should evaluate any practical professional experience obtained in the jurisdiction of origin to see whether this experience is sufficient to remedy, in whole or in part, the substantial difference in the scope of practice rights or formal qualifications between the host jurisdictions, prior to determining a compensatory measure. A compensatory measure may also take the form of, among other things, an adaptation period or, if required, an aptitude test.

Step Four: Identification of the Conditions for Recognition

Once the assessment of the overall equivalency of the scopes of practice rights or qualifications of the regulated profession is completed, each negotiating entity should specify in the MRA:

- (a) the legal competency required to practice the regulated profession;
- (b) the qualifications for the regulated profession;
- (c) whether compensatory measures are necessary;
- (d) the extent to which professional experience may compensate for substantial differences;
- (e) a description of any additional compensatory measure, including the use of any adaptation period or aptitude test, to the extent needed.

5. Mechanisms for Implementation

The MRA should state:

- (a) the rules and procedures to be used to monitor and enforce the provisions of the agreement;
- (b) the mechanisms for dialogue and administrative co-operation between the parties to the MRA; and
- (c) the means for individual applicants to address any matters arising from the interpretation or implementation of the MRA.

As a guide to the treatment of individual applicants, the MRA should include details on:

- (a) the point of contact for information on all issues relevant to the application, for example, the name and address of the Relevant Authorities, licensing formalities, information on additional requirements which need to be met in the host jurisdiction;
- (b) the duration of the procedures for the processing of applications by the Relevant Authorities of the host jurisdiction;
- (c) the documentation required of applicants and the form in which it should be presented ;
- (d) acceptance of documents and certificates issued in the host jurisdiction in relation to qualifications and licensing;
- (e) the procedures of appeal to or review by the Relevant Authorities.

The MRA should also include the following commitments by the Relevant Authorities:

- (a) requests about the measures will be promptly dealt with;
- (b) adequate preparation time will be provided if necessary;
- (c) exams or tests will be arranged with reasonable frequency;
- (d) fees for applicants seeking to take advantage of the terms of the MRA will be commensurate with the costs incurred by the host jurisdiction; and
- (e) information will be supplied on any assistance programmes in the host jurisdiction for practical training, and any commitments of the host jurisdiction in that context.

6. Licensing and Other Provisions in the Host Jurisdiction

If applicable, the MRA should also set out the means by which, and the conditions under which, a licence is obtained following the determination of eligibility, and what a licence entails, for example, a licence and its contents, membership of a professional body, use of professional or academic titles. Any licensing requirements other than qualifications should be explained and should include requirements relating to:

- (a) having an office address, maintaining an establishment or being a resident;
- (b) language skills;
- (c) proof of good character;
- (d) professional indemnity insurance;
- (e) compliance with host jurisdiction's requirements for use of trade or firm names; and
- (f) compliance with host jurisdiction ethics for example, independence and good conduct;

To ensure transparency, the MRA could include the following details for each host jurisdiction:

- (a) the relevant law to be applied, for example, regarding disciplinary action, financial responsibility, liability;
- (b) the principles of discipline and enforcement of professional standards, including disciplinary jurisdiction and any consequential effects on practicing professional activities;
- (c) the means for the ongoing verification of competence; and
- (d) the criteria for, and procedures relating to, revocation of the registration.

7. Revision of the MRA

If the MRA includes terms under which it can be reviewed or revoked, the details should be clearly stated.

8. Transparency

The Parties should:

- (a) make publicly available the text of MRAs which have been concluded; and
- (b) notify each other of any modifications to qualifications that may affect the application or implementation of a MRA. If possible, a Party should be given an opportunity to comment on the modifications of the other Party.

ANNEX X-B - CONCLUDED MRAs

[Placeholder for MRAs agreed by the time the TTIP negotiations are finalized]

SECTION III - COMPUTER SERVICES

Article 5-13

Understanding on computer services

1. To the extent that trade in computer services is liberalised in accordance with Chapter II, Section 1, Chapter III and IV of this Title, the Parties shall comply with the following paragraphs.
2. CPC¹⁷ 84, the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services: computer programmes defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients.
3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:
 - (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support,

¹⁷ CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 77, CPC prov, 1991.

technical assistance, or management of or for computers or computer systems;
or

- (b) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs; or
 - (c) data processing, data storage, data hosting or database services; or
 - (d) maintenance and repair services for office machinery and equipment, including computers; or,
 - (e) training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.
4. Computer and related services enable the provision of other services (e.g. banking) by both electronic and other means. However, there is an important distinction between the enabling service (e.g. web-hosting or application hosting) and the content or core service that is being delivered electronically (e.g. banking). In such cases, the content or core service is not covered by CPC 84.

SECTION IV - POSTAL AND COURIER SERVICES

Article 5-14 Scope and definitions

1. This Section sets out the principles of the regulatory framework for all postal and courier service liberalised in accordance with Chapters II, Section 1, III and IV of this Title.
2. For the purpose of this Section and of Chapters II Section 1, III and IV of this Title.
 - (a) A “licence” means an authorisation, granted to an individual supplier by a regulatory authority, which may be required before carrying out activity of supplying a given service.
 - (b) Universal service means the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.
 - (c) Express delivery services means collection, sorting, transport and delivery of postal items at accelerated speed and reliability and may include value added elements such as collection from point of origin, personal delivery to addressee, tracing, possibility of changing the destination and addressee in transit, conformation of receipt.

Article 5-15

Prevention of anti-competitive practices in the postal and courier sector

Appropriate measures shall be maintained or introduced for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation in the relevant markets for postal and courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

- a. engaging in anti-competitive cross-subsidization, such as for example using revenues of reserved services to cross-finance prices of services open for competition;
- b. discrimination and lack of transparency, such as for example unjustified differentiation in relation to the special tariffs and/or the associated conditions for services provided to big senders, bulk mailers or consolidators;
- c. unjustified preferential treatment of any service provider and/or services provided, especially in cases where these services are in free competition with services provided by other market operators such as for example express delivery services.

Article 5-16

Universal service

1. The universal service obligation will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.
2. Universal service obligation shall take into account and be proportional to the needs of the users that are not met by the market forces. In particular, the universal service obligation shall not include express delivery services.

Article 5-17

Licences

1. A licence may only be required for services which are within the scope of the universal service.
2. Where a licence is required, the following shall be made publicly available:
 - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and
 - (b) the terms and conditions of licences.

3. The reasons for the denial of a licence shall be made known to the applicant upon request and an appeal procedure through an independent body shall be established at the Party's level. Such a procedure shall be transparent, non-discriminatory, and based on objective criteria.

Article 5-18 Independence of the regulatory body

The regulatory body shall be legally separate from, and not accountable to, any supplier of postal and courier services. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants.

SECTION V- ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES

NB: The EU and the US have produced a consolidated text on electronic communications/telecommunications which has been made available to Member States and Members of the European Parliament.

Article 5-19 Scope and definitions

1. This Section sets out principles of the regulatory framework for the provision of electronic communications networks and services, liberalised pursuant to Chapter II Section1, Chapter III and IV of this Title.
2. For the purpose of this Sub-section:
 - (a) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical, or other electromagnetic means;
 - (b) 'electronic communications service' means a service which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting. Those services exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services;
 - (c) 'public electronic communications service' means any publicly available electronic communications service;
 - (d) 'public electronic communications network' means an electronic communications network used wholly or mainly for the provision of electronic communications

services available to the public which supports the transfer of information between network termination points;

- (e) 'public telecommunications transport service' means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, inter alia, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;
- (f) a 'regulatory authority' in the electronic communications sector means the body or bodies charged by a Party with the regulation of electronic communications mentioned in this sub-section;
- (g) 'essential facilities' mean facilities of a public electronic communications network and service that
 - are exclusively or predominantly provided by a single or limited number of suppliers; and
 - cannot feasibly be economically or technically substituted in order to provide a service;
- (h) 'associated facilities' means those associated services, physical infrastructures and other facilities or elements associated with an electronic communication network and/or service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include, inter alia, buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes and cabinets;
- (i) a 'major supplier' in the electronic communications sector is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for electronic communications services as a result of control over essential facilities or the use of its position in the market;
- (j) 'access' means the making available of facilities and/or services to another supplier under defined conditions, for the purpose of providing electronic communication services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming and access to virtual network services;
- (k) 'interconnection' means the physical and logical linking of public communications networks used by the same or a different suppliers in order to allow the users of one supplier to communicate with users of the same or another supplier or to access

services provided by another supplier. Services may be provided by the parties involved or other parties who have access to the network;

- (l) 'universal service' means the minimum set of services of specified quality that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price; its scope and implementation are decided by each Party;
- (m) 'number portability' means the ability of all subscribers of public electronic communications services who so request to retain, at the same location, the same telephone numbers without impairment of quality, reliability or convenience when switching between the same category of suppliers of public electronic communications services.

Article 5-20 **Regulatory authority**

1. Regulatory authorities for electronic communications networks and services shall be legally distinct and functionally independent from any supplier of electronic communications networks, electronic communications services or electronic communications equipment.
2. A party that retains ownership or control of providers of electronic communication networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control. The regulatory authority shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to it under national law.
3. The regulatory authority shall be sufficiently empowered to regulate the sector, and have adequate financial and human resources to carry out the task assigned to it. Only appeal bodies set up in accordance with paragraph 7 of this Article shall have the power to suspend or overturn decisions by the regulatory authority.

The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body. Parties shall ensure that regulatory authorities have separate annual budgets. The budgets shall be made public.

4. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.
5. The powers of the regulatory authorities shall be exercised transparently and in a timely manner.
6. Regulatory authorities shall have the power to ensure that suppliers of electronic communications networks and services provide them, promptly upon request, with all the information, including financial information, which is necessary to enable the regulatory authorities to carry out their tasks in accordance with this sub-section. Information requested shall be proportionate to the performance of the regulatory authorities' tasks and treated in accordance with the requirements of confidentiality.

7. Any user or supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. The merits of the case shall be duly taken into account and the appeal mechanism shall be effective. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced. Pending the outcome of the appeal, the decision of the regulatory authority shall stand, unless interim measures are granted in accordance with national law.
8. Parties shall ensure that the head of a regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a regulatory body or their replacements may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the regulatory authority concerned, or where applicable members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published.

Article 5-21

Authorisation to provide electronic communication networks and services

1. Provision of electronic communications networks and/or services shall be authorised, wherever possible, upon simple notification. In this case the service supplier concerned shall not be required to obtain an explicit decision or any other administrative act by the regulatory authority before exercising the rights stemming from the authorisation. The rights and obligations resulting from such authorisation shall be made publicly available in an easily accessible form. Obligations should be proportionate to the service in question.
2. Where necessary, a license for the right of use for radio frequencies and numbers can be required in order to:
 - a) avoid harmful interference;
 - b) ensure technical quality of service;
 - c) safeguard efficient use of spectrum; or
 - d) fulfil other objectives of general interest.

The terms and conditions for such licences shall be made publicly available.

3. Where a licence is required:
 - (a) all the licensing criteria and a reasonable period of time normally required to reach a decision concerning an application for a licence shall be made publicly available;

(b) the reasons for the denial of a licence shall be made known in writing to the applicant upon request;

(c) the applicant for a licence shall be able to seek recourse before an appeal body in the case where a licence has been denied.

4. Any administrative costs shall be imposed on suppliers in an objective, transparent, proportionate and cost-minimising manner. Any administrative charges imposed by any Party on suppliers providing a service or a network under an authorisation referred to in paragraph 1 or a license under paragraph 2 shall in total, cover only the administrative costs normally incurred in the management, control and enforcement of the applicable authorisation and licences. These administrative charges may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of legislation and administrative decisions, such as decisions on access and interconnection.¹⁸

[To be reviewed in conjunction with the sub-section on domestic regulation]

Article 5-22 Scarce Resources

1. The allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, shall be carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner. Procedures shall be based on objective, transparent, non-discriminatory and proportionate criteria.
2. The current state of allocated frequency bands shall be made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.
3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with Article [...] (market access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of electronic communications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

Article 5-23 Access and Interconnection

1. Access and interconnection should in principle be agreed on the basis of commercial negotiation between the suppliers concerned.
2. The Parties shall ensure that any suppliers of electronic communications services shall have a right and when requested by another supplier an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications networks and services. The Parties shall not maintain any

¹⁸ Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision

legal or administrative measures which oblige suppliers granting access or interconnection to offer different terms and conditions to different suppliers for equivalent services or impose obligations that are not related to the services provided.

3. The Parties shall ensure that suppliers that acquire information from another supplier in the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
4. Each Party shall ensure that a major supplier in its territory grants access to its essential facilities, which may include, inter alia, network elements, associated facilities and ancillary services, to suppliers of electronic communications services on reasonable and non-discriminatory¹⁹ terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance).
5. For public telecommunications transport services, interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:
 - (a) under non-discriminatory terms, conditions (including in relation to technical standards, specifications, quality and maintenance) and rates, and of a quality no less favourable than that provided for the own like services of such major supplier, or for like services of non-affiliated suppliers, or for its subsidiaries or other affiliates;
 - (b) in a timely fashion, on terms, conditions (including in relation to technical standards, specifications, quality and maintenance) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
 - (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

The procedures applicable for interconnection to a major supplier shall be made publicly available.

Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers where it is appropriate.

Article 5-24 **Competitive safeguards on major suppliers**

The Parties shall introduce or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

¹⁹ For the purpose of this section, non-discrimination is understood to refer to national treatment as defined in Article XX [national treatment], as well as to reflect sector-specific usage of the term to mean “terms and conditions no less favourable than those accorded to any other user of like public electronic communication networks or services under like circumstances”.

- (a) engaging in anti-competitive cross-subsidisation;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

Article 5-25
Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
2. Such obligations will not be regarded per se as anti-competitive, provided they are administered in a proportionate, transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and be not more burdensome than necessary for the kind of universal service defined by the Party.
3. All suppliers of electronic communications networks and/or services should be eligible to provide universal service. The designation of universal service suppliers shall be made through an efficient, transparent and non-discriminatory mechanism. Where necessary, Parties shall assess whether the provision of universal service represents an unfair burden on supplier(s) designated to provide universal service. Where justified on the basis of such calculation, and taking into account the market benefit, if any, which accrues to a supplier that offers universal service, regulatory authorities shall determine whether a mechanism is required to compensate the supplier(s) concerned or to share the net cost of universal service obligations.

Article 5-26
Number Portability

Each Party shall ensure that suppliers of public electronic communications services provide number portability on reasonable terms and conditions.

Article 5-27
Confidentiality of information

Each Party shall ensure the confidentiality of electronic communications and related traffic data by means of a public electronic communication network and publicly available electronic communications services subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

Article 5-28
Resolution of electronic communications disputes

1. In the event of a dispute arising between suppliers of electronic communications networks or services in connection with rights and obligations that arise from this section, the regulatory authority concerned shall, at the request of either party

concerned, issue a binding decision to resolve the dispute in the shortest possible timeframe and in any case within four months, except in exceptional circumstances.

2. When such a dispute concerns the cross-border provision of services, the regulatory authorities concerned shall co-ordinate their efforts in order to bring about a resolution of the dispute.
3. The decision of the regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based and shall have the right to appeal this decision, according to Article X.2, paragraph 7 of this section.
4. The procedure referred to in paragraphs 1, 2 and 3 of this Article shall not preclude either party concerned from bringing an action before the courts.

Article 5-29 **Foreign shareholding**

With regard to the provision of electronic communication services and networks through commercial presence, no Party shall impose joint venture requirements or limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

SECTION VI - FINANCIAL SERVICES

Sub-section 1 – Liberalization of financial services

Article 5 - 30 **Scope and definitions**

1. This Sub-section applies to measures affecting the supply of financial services, where financial services are liberalised pursuant to Chapters II Section 1, III and IV of this Title.
2. For the purpose of this Chapter and of Chapters II Section 1, III and IV of this Title
 - (a) ‘financial service’ means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:
 - A. Insurance and insurance-related services
 1. direct insurance (including co-insurance):
 - (a) life;
 - (b) non-life;

2. reinsurance and retrocession;
3. insurance inter-mediation, such as brokerage and agency; and
4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

B. Banking and other financial services (excluding insurance):

1. acceptance of deposits and other repayable funds from the public;
2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
3. financial leasing;
4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
5. guarantees and commitments;
6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (a) money market instruments (including cheques, bills, certificates of deposits);
 - (b) foreign exchange;
 - (c) derivative products including, but not limited to, futures and options;
 - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets, including bullion;
7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
8. money broking;
9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

11. provision and transfer of financial information, and financial data processing and related software;
 12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) ‘financial service supplier’ means any natural or juridical person of a Party that seeks to provide or provides financial services. The term ‘financial service supplier’ does not include a public entity.
- (c) ‘public entity’ means:
1. a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
- (d) ‘new financial service’ means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

Article 5 -31
Prudential carve-out

1. Nothing in this agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:
 - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
 - (b) ensuring the integrity and stability of the financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

Article 5 - 32
New financial services

Each Party shall permit a financial service supplier of the other Party to provide any new financial service. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such

authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

Article 5 - 33
Data processing

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is necessary in the ordinary course of business of such financial service supplier.
2. Each Party shall adopt appropriate safeguards for the protection of privacy and fundamental rights, and freedom of individuals, in particular with regard to the transfer of personal data.

Article 5 - 34
Specific exceptions

1. Nothing in this Title shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Title shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
4. The provisions of this article shall not be construed as limiting the rights of investors and investments under Chapter II Section 2 [Investment Protection] of this Title.

Article 5 -35
Self regulatory organisations

When a Party requires membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Articles X (National Treatment for investments) and Z (National Treatment for cross border trade).

Article 5 - 36

Clearing and payment systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Party's lender of last resort facilities.

Sub-section 2 – Regulatory cooperation in financial services

Article 5 - 37 General provisions

1. The provisions on regulatory co-operation under this sub-section shall apply to measures of the Parties which relate to financial services, auditing, accounting as well as any other area agreed by the Parties, including measures within the scope of paragraphs 1(a) and 1(b) of Article 5-31 (Prudential carve-out).
2. The terms used in this sub-section have the meaning given to them in the Chapter [Regulatory Cooperation].
3. Articles 5 and 6 and 7 of the Chapter [Regulatory Cooperation] apply to regulatory acts on financial services.
4. Chapter [dispute settlement] shall not apply to this subsection

Article 5 - 38 Regulatory cooperation

1. The Parties recognize that prudential measures strengthen domestic financial systems; encourage sound, efficient and robust institutions, markets, and infrastructure; and promote international financial stability by facilitating better-informed lending and investment decisions, improving market integrity, and reducing the risks of financial distress and contagion.
2. The Parties undertake to use their best endeavours to achieve mutual compatibility of their respective regulatory and supervisory frameworks for financial services in a way that supports the objectives mentioned in paragraph 1. Furthermore, the general objectives and principles of the Chapter [Regulatory Cooperation] apply to regulatory cooperation on financial services.
3. The Parties agree to consult each other at the earliest stage of the regulatory process.
4. The Parties agree, wherever possible, defer to the rules of the other Party if they achieve comparable outcomes, for the purpose of assessing compliance with domestic regulations.

5. The Parties shall conduct their cooperation in respect of financial services through a Joint EU/US Financial Regulatory Forum (“the Forum”), which is hereby established. The Forum shall be composed of representatives of regulators, supervisors and competent authorities responsible for financial regulation. In the area of financial services it shall carry out the functions of the Regulatory Cooperation Council established in Article 14 par. 1 of the Chapter [on Regulatory Cooperation].
 6. The detailed arrangements of regulatory cooperation shall be set out in a [Memorandum of Understanding on Regulatory Cooperation in Financial Services²⁰]
- NB: The relationship between the provisions of Chapter [] – Regulatory cooperation and the provisions for regulatory cooperation in financial services will be kept under review, as both sets of provisions are taking shape. The provisions for regulatory cooperation in financial services are built on the premise that they will apply to regulatory acts adopted by the EU and US Federal authorities, as well as to acts adopted by US States and EU Member States.

SECTION VII INTERNATIONAL MARITIME TRANSPORT SERVICES

Article 5 - 39 Scope, definitions and principles

1. This Section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Chapters II Section 1, III and IV of this Title.
2. Definitions
For the purpose of this Section and Chapters II Section 1, III and IV of this Title:
 - (a) ‘international maritime transport services’ means the transport of passengers and/or cargo by sea-going vessels between the US and the European Union or any non-Party. This includes the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services.
 - (b) ‘door-to-door or multimodal transport operations’ means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document.
 - (c) ‘international cargo’ means cargo transported between a port of one Party and a port of another Party or of a non-Party, or between a port of one European Union Member State and a port of another European Union Member State.
 - (d) ‘maritime auxiliary services’ means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services, and maritime freight forwarding services.

²⁰ The form of the legal instrument (and its legal nature) is to be decided at a later stage.

- (e) ‘maritime cargo handling services’ means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
- the loading/discharging of cargo to/from a ship;
 - the lashing/unlashing of cargo;
 - the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- (f) ‘customs clearance services’ (alternatively ‘customs house brokers’ services’) means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
- (g) ‘container station and depot services’ means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
- (h) ‘maritime agency services’ means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
- marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - acting on behalf of the companies organising the call of the ship or taking over cargoes when required.
- (i) ‘freight forwarding services’ means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.
- (j) ‘feeder services’ means the pre- and onward transportation by sea, between ports located in a Party, of international cargo, notably containerised, en route to or from a destination outside the territory of that Party.

3. Obligations

In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) the Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;
- (b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships, with regard to, inter alia, access to ports, the use of infrastructure and services of

ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

In applying these principles, the parties shall:

- (i) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and
 - (ii) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.
- (c) Each Party shall permit international maritime service suppliers of the other Party to have an enterprise in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers.
 - (d) The Parties shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.
 - (e) Each Party shall permit the international maritime transport service suppliers of the other party to re-position owned/leased transport equipment such as empty containers, not being carried as cargo against payment, between ports of the US or between ports of a Member State of the European Union.
 - (f) Each Party, subject to the authorisation of the competent authority where applicable, shall permit international maritime transport service suppliers of the other party to provide feeder or relay services between their national ports.

SECTION VIII - AIR TRANSPORT SERVICES

Article 5 - 40

Scope, definitions and obligations

1. This Section sets out the principles regarding the liberalisation of air transport services pursuant to Chapters II Section 1, and Chapters III and IV of this Title.
2. Neither Party undertakes any obligation on domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

- (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;

‘aircraft repair and maintenance services during which an aircraft is withdrawn from service’ mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

- (ii) the selling and marketing of air transport services;

‘selling and marketing of air transport services’ mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

- (iii) computer reservation system (CRS) services;

‘computer reservation system (CRS) services’ mean services provided by computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

- (iv) groundhandling services;

‘ground handling services’ mean the supply at an airport of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of an aircraft, aircraft servicing and cleaning; surface transport; flight operation, crew administration and flight planning.

Ground handling services do not include security, aircraft repair and maintenance, or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems’

- (v) airport operation services;

‘airport operation services’ mean the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services;

- (vi) Rental of aircrafts with crew;

- (vii) Ownership and control of air carriers.

3. In relation to the services indicated at point (i) to (vi) above, each party undertakes obligations subject to the reservations indicated in its Annex I, Annex II and Annex III.

4. In relation to the ownership and control of air carriers (indicated at point (vii) above), each party undertakes not to apply any limitation relating to ownership and control to natural persons or enterprises of the other party, including for the purpose of granting an operating licence for the operation of air transport services.

CHAPTER VI - ELECTRONIC COMMERCE²¹

Article 6-1 Objective and scope

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, including by co-operating on the issues raised by electronic commerce under the provisions of this Chapter.
2. This Chapter shall apply to trade enabled by telecommunications and/or other information and communication technologies.
3. The provisions in this chapter shall not apply to gambling services, broadcasting services, audio-visual services, services of notaries or equivalent professions and legal representation services.

Article 6-2 Definitions

For the purpose of this Chapter:

- a) 'consumer' means any natural person using or requesting a publicly available electronic communications service for purposes outside his trade, business or profession;
- b) 'direct marketing communication' means any form of advertising by which a natural or legal person communicates marketing messages directly to end-users via a public electronic communications network and, for the purpose of this agreement, covers at least electronic mail and text and multimedia messages (SMS and MMS);
- c) 'electronic authentication service' means a service that enables to confirm:
 - i. the electronic identification of a natural or legal person, or
 - ii. the origin and integrity of data in electronic form;
- d) 'electronic seal' means data in electronic form used by a legal person which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity;

²¹ This chapter is part of the Title on trade in services, investment and e-commerce. The provisions on exceptions and the general provisions of this Title including the reference to the right to adopt, maintain and enforce measures necessary to pursue legitimate policy objectives such as consumer protection apply to the entirety of this chapter.

- e) 'electronic signature' means data in electronic form which are attached to or logically associated with other electronic data and fulfils the following requirements:
 - i. it is used by a natural person to agree on the electronic data to which it relates;
 - ii. it is linked to the electronic data to which it relates in such a way that any subsequent alteration in the data is detectable;
- f) 'electronic trust services' means an electronic service consisting of the creation, verification, validation of electronic signatures, electronic seals, electronic time stamps, electronic registered delivery, website authentication and certificates related to those services; or
- g) 'end-user' means any natural or legal person using or requesting a publicly available electronic communications service, either as a consumer or for trade, business or professional purposes.

Article 6-3

Customs duties on electronic transmissions

The Parties agree that electronic transmissions shall be considered as the provision of services, within the meaning of Chapter III (cross-border supply of services), which cannot be subject to customs duties.

Article 6-4

Principle of no prior authorisation

1. The Parties shall ensure that the provision of services by electronic means may not be subject to prior authorisation or any other requirement having equivalent effect.
2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of electronic communications.

Article 6-5

Conclusion of contracts by electronic means

The Parties shall ensure that their legal systems allow contracts to be concluded by electronic means and that the legal requirements for contractual processes neither create obstacles for the use of electronic contracts nor result in such contracts being

deprived of legal effectiveness and validity for having been made by electronic means²².

Article 6-6 **Electronic trust and authentication services**

1. A Party shall not deny the legal effect and admissibility as evidence in legal proceedings of an electronic trust and electronic authentication service solely on the basis that the service is in electronic form.
2. Neither Party shall adopt or maintain measures regulating electronic trust and electronic authentication services that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic methods for their transaction; or
 - (b) prevent parties to an electronic transaction from having the opportunity to prove to judicial and administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic trust and electronic authentication services.

Article 6-7 **Unsolicited direct marketing communications**

1. Each Party shall ensure that end-users are effectively protected against unsolicited direct marketing communications. To this end, in particular the following paragraphs shall apply.
2. Each Party shall ensure that natural and legal persons do not send direct marketing communications to consumers who have not given their prior consent²³.
3. Notwithstanding paragraph 1, the Parties shall allow natural and legal persons which have collected, in accordance with each Party's own laws and regulations, a consumer's contact details in the context of the sale of a product or a service, to send direct marketing communications to that consumer for their own similar products or services.

²² This provision shall not apply to contracts that create or transfer rights in real estate; contracts requiring by law the involvement of courts, public authorities or professions exercising public authority; contracts of suretyship granted and or collateral securities furnished by persons acting for purposes outside their trade, business or profession; and contracts governed by family law or by the law of succession.

²³ Prior consent shall be defined in accordance with each Party's own laws and regulations.

4. Each Party shall ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made, and contain the necessary information to enable end-users to request cessation free of charge and at any moment.

Article 6-8
Cooperation on regulatory issues in e-commerce²⁴

1. The parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which shall inter alia address the following issues:
 - the recognition and facilitation of interoperable cross-border electronic trust and authentication services;
 - the treatment of direct marketing communications;
 - the protection of consumers in the ambit of electronic commerce; and
 - any other issue relevant for the development of electronic commerce.
2. Such cooperation shall focus on exchange of information on the Parties' respective legislation on these issues as well as on the implementation of such legislation.

²⁴ The relation between this chapter and the chapter on regulatory cooperation will be further discussed.

CHAPTER VII - EXCEPTIONS

Article 7 - 1

General exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment of enterprises, the operation of investments or cross-border supply of services, nothing in Chapter II Section 1, Chapter III, Chapter IV, Chapter V and Chapter VI shall be construed to prevent the adoption or enforcement by any Party of measures:
 - (a) necessary to protect public security or public morals or to maintain public order;
 - (b) necessary to protect human, animal or plant life or health;
 - (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
 - (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
 - (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
 - (f) inconsistent with Articles X and X (on National Treatment), provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, entrepreneurs or services suppliers of the other Party²⁴.

²⁴

Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in paragraph (f) of this provision and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

NOTE:

Articles on *Balance of Payments, Taxation, Security Exceptions* will be inserted in the general/horizontal part of the Agreement and will apply to this Title.