

*This **document** is the European Union's (EU) proposal for a legal text on Investment Liberalisation, Trade in Services, and Digital Trade in the EU-ESA5 deepening of interim agreement. It will be tabled for discussion with ESA5. The actual text in the final agreement will be a result of negotiations between the EU and ESA5.*

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.*

EU-ESA Economic Partnership Agreement

TITLE []

INVESTMENT LIBERALISATION AND TRADE IN SERVICES

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CHAPTER I

GENERAL PROVISIONS

Article 1.1

Scope

1. The Parties, affirming their commitment to create a better climate for the development of trade and investment between them, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services and investment.
2. The Parties retain the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.
3. This Title does not apply to measures affecting natural persons of a Party seeking access to the employment market of another Party, nor to measures regarding nationality or citizenship, residence or employment on a permanent basis.
4. This Title shall not 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 its borders and to ensure the orderly movement of natural persons across them, provided that such measures are not applied in such a manner as to nullify or impair the benefits¹ accruing to another Party under the terms of this Title.
5. This Title does not apply to:

¹ 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 this Title.

- (a) air services or related services in support of air services², other than the following:
- (i) aircraft repair and maintenance services;
 - (ii) computer reservation system (CRS) services;
 - (iii) ground handling services;
 - (iv) the following services provided using a manned aircraft, subject to the Parties' respective laws and regulations governing the admission of aircrafts to, departure from and operation within, their territory: aerial fire-fighting, flight training, spraying, surveying, mapping, photography, and other airborne agricultural, industrial, and inspection services; and
 - (v) the selling and marketing of air transport services;
- (b) audio-visual services;
- (c) national maritime cabotage³; and
- (d) internal waterways transport.

² Air services or related services in support of air services include, but are not limited to, the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; the rental of aircraft with crew and airport operation services.

³ National maritime cabotage covers, for the European Union, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea, done in Montego Bay, Jamaica, on 10 December 1982, and traffic originating and terminating in the same port or point located in a Member State of the European Union.

Article 1.2

Definitions

For the purposes of this Title:

- (a) "activities performed in the exercise of governmental authority" means activities which are performed, including services which are supplied, neither on a commercial basis nor in competition with one or more economic operators;
- (b) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
- (c) "computer reservation system (CRS) services" means 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;
- (d) "covered enterprise" means an enterprise in the territory of a Party directly established in accordance with subparagraph (i) by an investor of another Party, in accordance with the applicable law, existing on the date of entry into force of this Agreement or established thereafter;
- (e) "cross-border trade in services" means the supply of a service:
 - (i) from the territory of a Party into the territory of another Party; or
 - (ii) in the territory of a Party to the service consumer of another Party;
- (f) "direct taxes" comprises all taxes on income, or capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, taxes on wages or salaries paid by enterprises and taxes on capital appreciation;
- (g) "economic activity" means any activity of an industrial, commercial or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority;
- (h) "enterprise" means a juridical person or a branch or a representative office of a juridical person;

- (i) "establishment" means the setting up or the acquisition of a juridical person, including through capital participation, or the creation of a branch or representative office, in the territory of a Party, with a view to creating or maintaining lasting economic links;
- (j) "existing" means in effect on the date of entry into force of this Agreement;
- (k) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning; ground handling services do not include: self-handling; 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;
- (l) "investor of a Party" means a natural or juridical person of a Party that seeks to establish, is establishing or has established an enterprise in accordance with subparagraph (i), in the territory of another Party;
- (m) "juridical person" means any legal entity duly constituted or otherwise organised under the 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;
- (n) "juridical person of a Party" means⁴:
 - (i) for the European Union:

A a juridical person constituted or organised under the law of the European Union or of at least one of its Member States and engaged in

⁴ For greater certainty, the shipping companies mentioned in this point are only considered as juridical persons of a Party with respect to their activities relating to the supply of maritime transport services.

substantive business operations⁵ in the territory of the European Union; and

B shipping companies established outside the European Union, and controlled by natural persons of a Member State of the European Union, whose vessels are registered in, and fly the flag of, a Member State of the European Union.

(ii) for the ESA States:

A a juridical person constituted or organised under the law of an ESA State and engaged in substantive business operations in the territory of an ESA State; and

B shipping companies established outside an ESA State, and controlled by natural persons of an ESA State, whose vessels are registered in, and fly the flag of, an ESA State.

(o) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, practice, procedure, decision, administrative action or any other form;

(p) "measures of a Party" means any measures adopted or maintained by⁶:

(i) central, regional or local governments or authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(q) "natural person of a Party" means:

(i) for the European Union, a national of one of the Member States of the European Union according to its law⁷; and

⁵ In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the European Union 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".

⁶ For greater certainty, "measures of a Party" covers measures by entities listed under points (o) (i) and (o) (ii), which are adopted or maintained by instructing, directing or controlling, either directly or indirectly, the conduct of other entities with regard to those measures.

- (ii) for the ESA States, a national of one of the ESA States according to its law;
- (r) "operation" means the conduct, management, maintenance, use, enjoyment, or sale or other form of disposal of an enterprise;
- (s) "selling and marketing of air transport services" means 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, but not including the pricing of air transport services nor the applicable conditions;
- (t) "service" means any service in any sector except services supplied in the exercise of governmental authority; and
- (u) "service supplier" means any natural or juridical person that seeks to supply or supplies a service.

[EU Placeholder: Article on General Exceptions if it is not addressed in the general part]

Article 1.3

Denial of benefits

Each Party may deny the benefits of this Title to a covered enterprise or to an investor or service supplier of another Party if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

- a. prohibit transactions with that covered enterprise, investor or service supplier,
or

⁷ The definition of natural person also includes 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 the law of the Republic of Latvia, to receive a non-citizen's passport.

- b. which would be violated or circumvented if the benefits of this Title were accorded to that covered enterprise, investor or service supplier, including where the measures prohibit transactions with a natural or juridical person who owns or controls either of them.

Article 1.4

Regional preferences

[Placeholder for a provision on regional preferences according to which any more favourable treatment and advantage that may be granted under this Agreement by an ESA State to the EU shall be enjoyed by the other ESA States. This is without prejudice to the chapter in which such an obligation will be placed].

CHAPTER II

INVESTMENT LIBERALISATION

Article 2.1

Scope

1. This Chapter applies to measures of a Party affecting establishment or operation to perform economic activities by:
 - (a) investors of another Party;
 - (b) covered enterprises; and
 - (c) for the purposes of Article 2.6 [Performance requirements], any enterprise operating in the territory of the Party which adopts or maintains the measure.
2. This Chapter does not apply to any measure of a Party with respect to government procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article XX (Scope and coverage).

3. Articles 2.2 to 2.5 [ALL EXCEPT PERFORMANCE REQUIREMENTS] do not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees, and insurance.
4. For all of the Parties, Article 2.2 [Market Access], Article 2.3 paragraph 1 [National Treatment], Article 2.5 [Senior Management and Boards of Directors] and Article 2.6 [Performance Requirements] shall only apply to the sectors inscribed, and subject to any conditions and qualifications, set out in Annex XXX.

Article 2.2

Market Access

1. Each Party shall not adopt or maintain, with regard to market access through establishment or operation by an investor of another Party or by a covered enterprise, either on the basis of its entire territory or on the basis of a territorial sub-division, measures that:
 - (a) impose limitations on⁸:
 - (i) the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;
 - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

⁸ Subparagraphs (a) (i) to (iii) do not cover measures taken in order to limit the production of an agricultural or fishery product.

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

Article 2.3

National Treatment

1. Each Party shall accord to investors of another Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own investors and to their enterprises, with respect to establishment in its territory.
2. Each Party shall accord to investors of another Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own investors and to their enterprises, with respect to operation in its territory.
3. Notwithstanding paragraph 2, each Party may adopt or maintain any measure with respect to the operation of a covered enterprise that is not inconsistent with its commitments inscribed in Annex XXX (lists of commitments on liberalisation of investments of the Parties), where such measure is:
 - (a) a measure that is adopted on or before the entry into force of this Agreement;
 - (b) a measure referred to in subparagraph (a) that is being continued, replaced or amended after the entry into force of this Agreement, provided the measure is no less consistent with paragraph 2 after being continued, replaced or amended than the measure as it existed prior to its continuation, replacement or amendment; or

(c) a measure not falling within points (a) or (b), provided it is not applied in respect of, or in a way that causes loss or damage to, a covered enterprise established in that Party before the entry into force of such measure.

4. The treatment accorded by each Party under paragraphs 1 and 2 means:
 - (a) with respect to a regional or local level of government of an ESA State, treatment no less favourable than the most favourable treatment accorded, in like situations, by that level of government to investors of that ESA State and to their enterprises in its territory; and
 - (b) with respect to a government of, or in, a Member State of the European Union, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors of that Member State and to their enterprises in its territory.

Article 2.4

Most Favoured Nation Treatment

1. *[The EU reserves the right to propose a text on most favoured nation treatment for establishment].*
2. Each Party shall accord to investors of another Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to investors of a third country and to their enterprises, with respect to operation in its territory.
3. Paragraphs 1 and 2 shall not be construed as obliging each Party to extend to investors of another Party or to covered enterprises the benefit of any treatment resulting from:
 - (a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or
 - (b) measures providing for recognition, including of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures as referred to in paragraph 3 of the GATS 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 agreements.
5. For greater certainty, substantive provisions in other international agreements concluded by each Party with a third country do not in themselves constitute the "treatment" referred to in paragraphs 1 and 2. Measures of each Party pursuant to those provisions⁹ may constitute such treatment and thus give rise to a breach of this Article.
6. Each Party may maintain a measure inconsistent with paragraphs 1 and 2 provided that such a measure is listed in, and meets the conditions of, Annex XXX [Annex on MFN].

Article 2.5

Senior management and boards of directors

Each Party shall not require a covered enterprise to appoint individuals of any particular nationality as executives, managers or members of boards of directors.

Article 2.6

Performance Requirements

1. Each Party shall not impose or enforce any requirement, or enforce any commitment or undertaking, in connection with the establishment or operation of any enterprise in its territory¹⁰:
 - (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;

⁹ For greater certainty, the mere transposition of those provisions into domestic law, to the extent that it is necessary in order to incorporate them into the domestic legal order, does not in itself qualify as a measure.

¹⁰ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purpose of paragraph 1.

- (c) to 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 or any other entities in its territory;
 - (d) 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 enterprise;
 - (e) to restrict sales of goods or services in its territory that such enterprise produces or supplies, by relating those sales in any way to the volume or value of its exports or foreign exchange inflows;
 - (f) to transfer technology, a production process or other proprietary knowledge to a natural or juridical person or any other entity in its territory;
 - (g) to supply exclusively from the territory of that Party a good produced or a service supplied by the enterprise to a specific regional or world market; or
 - (h) to restrict the exportation or sale for export.
2. Each Party shall not condition the receipt, or continued receipt of an advantage, in connection with the establishment or operation of an enterprise 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 or services supplied in its territory, or to purchase goods or services from natural or juridical persons or any other entity 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 enterprise;
 - (d) to restrict sales of goods or services in its territory that such enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows; or
 - (e) to restrict the exportation or sale for export.
3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production,

supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Point (f) of paragraph 1 does not apply if:
 - (a) the requirement is imposed or enforced, or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be a violation of competition law; or
 - (b) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31*bis* of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.
5. Points (a) to (c) of paragraph 1 and points (a) and (b) of paragraph 2 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.
6. 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.
7. Each Party shall neither impose nor enforce any measure inconsistent with its current or future obligations under the WTO TRIMS Agreement, even where such measure has been listed by that Party in Annex XXX (lists of reservations on liberalisation of investments of the Parties). If, at the date of entry into force of this Agreement, a Party has no obligations under the TRIMS Agreement, this provision shall apply as from the day one month prior to the date of entry into force of the relevant obligations of that Party under such Agreement.
8. For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with its commitments in Annex XXX.

CHAPTER III

CROSS-BORDER TRADE IN SERVICES

Article 3.1

Scope

1. This Chapter applies to measures of a Party affecting the cross-border trade in services by service suppliers of another Party.
2. This Chapter does not apply to any measure of a Party with respect to government procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article XX (Scope and coverage).
3. This Chapter does not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees, and insurance.
4. For each of the Parties, Article 3.2 [Market Access] and Article 3.3 [National Treatment] shall only apply to the sectors inscribed, and subject to any conditions and qualifications set out, in its Annex XXX.

Article 3.2

Market Access

A Party shall not adopt or maintain, either on the basis of its entire territory or on the basis of a territorial sub-division, a measure that:

- (a) imposes limitations on:
 - (i) the number of services suppliers that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test¹¹;

¹¹ Point (i) includes measures which require a service supplier of another Party to have an enterprise within the meaning of point (d) of Article 1.2 (Definitions) or to be resident in a Party's territory as a condition for the cross-border supply of a service.

- (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; and
 - (iii) 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; or
- (b) restricts or requires specific types of legal entity or joint venture through which a service supplier may supply a service.

Article 3.3

National Treatment

1. Each Party shall accord to services and service suppliers of another Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of another Party either formally identical treatment or formally different treatment to that it accords to its own 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 a Party compared to services or service suppliers of another Party.
4. Nothing in this Article shall be construed as requiring a 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

[The EU reserves the right to propose a text on most favoured nation treatment].

CHAPTER IV

**ENTRY AND TEMPORARY STAY OF NATURAL PERSONS FOR BUSINESS
PURPOSES**

Article 4.1

Scope and Definitions

1. This Chapter applies to measures of a Party affecting the supply of services through the entry and temporary stay in its territory of natural persons of another Party, who are: business sellers, business visitors for establishment purposes, contractual service suppliers, independent professionals, and intra-corporate transferees.
2. To the extent that commitments are not undertaken in this Chapter, all requirements provided for in the law of a Party regarding the entry and temporary stay of natural persons shall continue to apply, including regulations concerning the period of stay.
3. Notwithstanding the provisions of this Chapter, all requirements provided for in the law of a Party regarding work and social security measures shall continue to apply, including regulations concerning minimum wages and collective wage agreements.
4. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in that dispute.
5. For the purposes of this Chapter:
 - (a) "business sellers" means natural persons who:
 - (i) are representatives of a services or goods supplier of a Party;

- (ii) are responsible for negotiating the sale of services or goods, or entering into agreements to sell services or goods for that operator in the territory of another Party;
 - (iii) do not engage in making direct sales to the general public;
 - (iv) do not receive remuneration from a source located within another Party;
 - (v) do not engage in the supply of a service; and
 - (vi) are not commission agents;
- (b) "business visitors for establishment purposes" means natural persons, working in a senior position within a juridical person of a Party, who:
- (i) are responsible for setting up an enterprise of such juridical person in the territory of another Party;
 - (ii) do not offer or provide services or engage in any economic activity other than that which is required for the purposes of the establishment of that enterprise; and
 - (iii) do not receive remuneration from a source located within another Party.
- (c) "contractual services suppliers" means natural persons employed by a juridical person of a Party (other than through an agency for placement and supply services of personnel), which is not established in the territory of another Party and has concluded a bona fide contract, not exceeding twelve months, to supply services to a final consumer in another Party requiring the temporary presence of its employees¹² who:
- (i) have offered the same type of services as employees of the juridical person for a period of not less than one year immediately preceding the date of their application for entry and temporary stay;

¹² The service contract referred to under (b) and (c) shall comply with the requirements of the law of the Party where the contract is executed.

- (ii) possess, on that date, at least three years of professional experience in the sector of activity that is the object of the contract¹³, a university degree or a qualification demonstrating knowledge of an equivalent level¹⁴ and the professional qualifications legally required to exercise that activity in another Party; and
 - (iii) do not receive remuneration from a source located within another Party.
- (d) "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who:
- (i) have not established in the territory of another Party;
 - (ii) have concluded a bona fide contract (other than through an agency for placement and supply services of personnel) for a period not exceeding twelve months to supply services to a final consumer in another Party, requiring their presence on a temporary basis¹⁵; and
 - (iii) possess, on the date of their application for entry and temporary stay, at least six years of professional experience in the relevant activity, a university degree or a qualification demonstrating knowledge of an equivalent level¹⁶ and the professional qualifications legally required to exercise that activity in another Party.
- (e) "intra-corporate transferees" means natural persons, who:
- (i) have been employed by a juridical person of a Party or its branch, or have been partners in it, for a period of not less than one year immediately

¹³ Obtained after having reached the age of majority.

¹⁴ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

¹⁵ The service contract referred to under (b) and (c) shall comply with the requirements of the law of the Party where the contract is executed.

¹⁶ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

preceding the date of their application for the entry and temporary stay in another Party¹⁷;

- (ii) at the time of application reside outside the territory of another Party;
- (iii) are temporarily transferred to an enterprise of the juridical person in the territory of another Party¹⁸ which is a member of the group of the originating juridical person or branch, including its representative office, subsidiary, branch or head company; and
- (iv) belong to one of the following categories:

A. managers: natural persons working in a senior position, who primarily direct the management of the enterprise¹⁹ in another Party, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent and whose responsibilities include:

1. directing the enterprise or a department or subdivision thereof;
2. supervising and controlling the work of other supervisory, professional or managerial employees; and
3. having the authority to recommend hiring, dismissing or other personnel-related actions.

B. specialists: natural persons possessing specialised knowledge, essential to the enterprise's areas of activity, techniques or management, which shall be assessed taking into account not only knowledge specific to the enterprise, but also whether the person

¹⁷ For greater certainty, managers and specialists may be required to demonstrate that they possess the professional qualifications and experience needed in the juridical person to which they are transferred.

¹⁸ For greater certainty, managers and specialists may be required to demonstrate that they possess the professional qualifications and experience needed in the juridical person to which they are transferred.

¹⁹ For greater certainty, while managers or executives do not directly perform tasks concerning the actual supply of the services, this does not prevent them, in the course of executing their duties as described above, from performing such tasks as may be necessary for the provision of the services.

has a high level of qualification, including adequate professional experience, referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession; or

- C. trainee employees: natural persons possessing a university degree who are temporarily transferred for career development purposes or to obtain training in business techniques or methods²⁰ and are paid during the transfer.

Article 4.2

Intra-corporate Transferees and Business Visitors for Establishment Purposes

1. Subject to the relevant conditions and qualifications specified in Annex XXX [reservations for ICTs and BVEP] or in Annex XXX (reservations):
 - a. A Party shall allow:
 - (i) the entry and temporary stay of intra-corporate transferees and business visitors for establishment purposes; and
 - (ii) the employment in its territory of intra-corporate transferees of another Party.
 - b. A Party shall not maintain or adopt limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes or that an investor may employ as intra-corporate transferees, either on the basis of a territorial subdivision or on the basis of its entire territory.
 - c. A Party shall accord to Intra-corporate Transferees and Business Visitors for Establishment Purposes of another Party, with regard to their temporary stay in its

²⁰ The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For AT, CZ, DE, FR, ES, HU and LT, training must be linked to the university degree which has been obtained.

territory, treatment no less favourable than that it accords, in like situations, to its own natural persons.

2. The permissible length of stay shall be for a period of up to three years for managers and specialists, up to one year for trainee employees, and up to ninety days within any six-month period for business visitors for establishment purposes.

Article 4.3

Business sellers

1. For every sector liberalised in accordance with Chapter II of this Title and subject to any reservations listed in Annex XXX [reservations for ICTs, BVEP, and BS]:
 - a. A Party shall allow entry and temporary stay of business sellers of another Party for a period of up to ninety days in any twelve-month period.
 - b. A Party shall allow entry of business sellers without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.

Article 4.4

Contractual Service Suppliers and Independent Professionals

1. In the sectors, subsectors and activities specified in Annex XXX (CSSs and IPs) and subject to the relevant conditions and qualifications specified therein or in Annex XXX (reservations):
 - (i) A Party shall allow the entry and temporary stay of Contractual Service Suppliers and Independent Professionals in its territory.
 - (ii) A Party shall not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of another

Party allowed temporary entry, in the form of numerical quotas or an economic needs test.

- (iii) A Party shall accord to Contractual Service Suppliers and Independent Professionals of another Party, with regard to the supply of their services in its territory, treatment no less favourable than that it accords, in like situations, to its own service suppliers.
2. Access accorded under the provisions of this Article relates only to the service which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided.
3. The number of persons covered by the service contract shall not be greater than necessary to fulfil the contract, as it may be requested by the law of the Party where the service is supplied.
4. The permissible length of stay shall be for a cumulative period of not more than six months in any twelve-month period, or for the duration of the contract, whichever is less.

Article 4.5

Transparency

1. A Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons of another Party, referred to in paragraph 1 of Article 4.1.
2. The information referred to in paragraph 1 shall, to the extent possible, include inter alia the following information relevant to the entry and temporary stay of natural persons:
 - (a) entry conditions;
 - (b) an indicative list of documentation that may be required in order to verify the fulfilment of the conditions;
 - (c) indicative processing time;
 - (d) applicable fees;
 - (e) appeal procedures; and

- (f) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

CHAPTER V

FACILITATION OF INVESTMENT AND OF TRADE IN SERVICES

SECTION A

PROVISIONS OF GENERAL APPLICATION

Article 5.1

Definitions

For the purposes of this Chapter:

- (a) “investment” means the establishment and operation to perform economic activities by investors of another Party or covered enterprises²¹.

Article 5.2

Administration of measures of general application

Each Party shall ensure that all measures of general application affecting investment, cross-border trade in services or the supply of a service through the presence of a natural person of a Party in the territory of another Party of categories of natural persons as defined in Article 4.1 (Scope and Definitions) of Chapter IV are administered in a reasonable, objective and impartial manner.

Article 5.3

Publication requirements

1. Each Party shall publish promptly or otherwise make publicly available in writing and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application with respect to any matter covered by this Chapter in such a manner as to enable investors or service suppliers of a Party to become acquainted with them.

²¹ For greater certainty, this Chapter does not create new or modify existing commitments relating to the liberalisation of investment, nor does it create new or modify existing rules on the protection of investors established in the territories of the Parties and their investments, or investor-state dispute settlement.

2. For the purposes of this Chapter, “publish” means to include in an official publication, such as an official journal, or on an official website.

Article 5.4

Publication in advance and opportunity to comment

1. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party²² shall publish in advance:
 - (a) the laws and regulations of general application it proposes to adopt in relation to matters falling within the scope of this Chapter; or
 - (b) documents that provide sufficient details about such a possible new law or regulation of general application to allow interested persons and other Parties to assess whether and how their interests might be significantly affected.
2. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party is encouraged to apply paragraph 1 to procedures and administrative rulings of general application it proposes to adopt in relation to matters falling within the scope of this Chapter.
3. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall provide any person, on a non-discriminatory basis, a reasonable opportunity to comment on such proposed measures or documents published under paragraph 1 or 2.
4. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Party shall consider comments received pursuant to paragraph 3²³.
5. In publishing a law or regulation of general application referred to in paragraph 1, or in advance of such publication, to the extent practicable and in a manner consistent with its legal system for adopting measures, each Party is encouraged to explain the purpose and rationale of that law or regulation.
6. Each Party shall, to the extent practicable, endeavour to allow a reasonable time between publication of the text of a law or regulation of general application referred to in paragraph 1 and the date on which investors must comply with the law or regulation.

²² The Parties understand that paragraphs 1 to 4 recognise that the Parties have different systems to consult on certain measures before they are final, and that the alternatives set out in paragraph 1 reflect different legal systems.

²³ This provision does not place any obligation on the final decision of a Party that adopts or maintains any measure for authorisation of an investment.

Article 5.5

Enquiries

- 1 Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any person regarding any laws or regulations, with respect to any matter covered by this [title/chapter].
2. Upon request of a Party, another Party shall promptly provide information and respond to questions pertaining to any law or regulation whether in force or planned, with respect to any matter covered [title/chapter], unless a specific mechanism is established under another provision of this [title/chapter/agreement].

[Note: provisions in this article may be covered by a general/horizontal chapter, and may hence be readjusted/removed at a later stage]

Article 5.6

Disclosure of confidential information

Nothing in this Chapter 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.

Article 5.7

Review and Appeal

1. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting investment, cross-border trade in services, or the supply of a service through the presence of a natural person of a Party in the territory of another Party of categories of natural persons as defined in Article 4.1 (Scope and Definitions) of Chapter IV. Where such procedures are not independent of the competent authority entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.
2. Each Party shall ensure that the parties to the proceedings referred to in paragraph 1 are provided with the right to:
 - (a) a reasonable opportunity to support or defend their respective positions and to submit all relevant information; and

- (b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority.
3. Each Party shall ensure that the decision referred to in paragraph 2 shall, subject to appeal or further review as provided for in its law, be implemented by the authority entrusted with administrative enforcement.

SECTION B

DOMESTIC REGULATION FOR SERVICES AND INVESTMENT

Article 5.8

Scope and definitions

1. This Section applies to measures of the Parties relating to:
- (a) licensing requirements and procedures, qualification requirements and procedures, and technical standards that affect cross-border trade in services or the supply of a service through the presence of a natural person of a Party in the territory of another Party of categories of natural persons as defined in Article 4.1 (Scope and Definitions) of Chapter IV; or
 - (b) the authorisation of investment.

As far as measures relating to technical standards are concerned, this Section only applies to such measures affecting trade in services. Technical standards do not include regulatory or implementing technical standards for financial services.

2. With respect to the measures referred to in subparagraph (a) of paragraph 1, this Section only applies to sectors for which a Party has undertaken specific commitments and to the extent that these specific commitments apply. It does not apply to measures to the extent that they constitute limitations subject to scheduling under Article 3.2 (Market Access CBTS), Article 3.3 (National Treatment CBTS), Article 4.2 (Intra-corporate Transferees and Business Visitors for Establishment Purposes), Article 4.3 (Business sellers), or Article 4.4 (Contractual Service Suppliers and Independent Professionals).
3. For the purposes of this Section,
- (a) "authorisation" means the permission to supply a service, resulting from a procedure a natural or legal person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards or the permission to pursue any activity related to an investment, resulting from a procedure an investor must adhere to in order to demonstrate compliance with the necessary requirements; and

- (b) “competent authority” means a central, regional or local government or authority or non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation referred to in point (a).

Article 5.9

Submission of applications

Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

Article 5.10

Application timeframes

If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application at any time throughout the year. If a specific time period for applying for authorisation exists, the Party shall ensure that the competent authorities allow a reasonable period of time for the submission of an application.

Article 5.11

Electronic applications and acceptance of copies

If a Party requires authorisation, it shall ensure that its competent authorities:

- (a) to the extent possible accept applications in electronic format; and
- (b) accept copies of documents, that are authenticated in accordance with the Party’s domestic law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

Article 5.12

Processing of applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:

- (a) to the extent practicable, provide an indicative timeframe for the processing of an application;

- (b) at the request of the applicant, provide without undue delay information concerning the status of the application;
- (c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's domestic laws and regulations;
- (d) if they consider an application complete for the purposes of processing under the Party's domestic laws and regulations²⁴, within a reasonable period of time after the submission of the application ensure that:
 - (i) the processing of the application is completed; and
 - (ii) the applicant is informed of the decision concerning the application, to the extent possible in writing²⁵;
- (e) if they consider an application incomplete for the purposes of processing under the Party's domestic laws and regulations, within a reasonable period of time, to the extent practicable:
 - (i) inform the applicant that the application is incomplete;
 - (ii) at the request of the applicant identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and
 - (iii) provide the applicant with the opportunity to provide the additional information that is required to complete the application²⁶;

however, if none of the actions referred to in points (i), (ii) and (iii) is practicable, and the application is rejected due to incompleteness, ensure that the competent authorities inform the applicant within a reasonable period of time; and
- (f) if an application is rejected, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and of the timeframe for an appeal against that decision and, if applicable, the procedures for resubmission of an application; an applicant shall not be prevented from submitting another application solely on the basis of a previously rejected application.

²⁴ Competent authorities may require that all information is submitted in a specified format to consider it "complete for the purposes of processing".

²⁵ Competent authorities may meet the requirement set out in point (ii) by informing an applicant in advance in writing, including through a published measure, that a lack of response after a specified period of time from the date of submission of the application indicates acceptance of the application. The reference to "in writing" should be understood as including electronic format.

²⁶ Such "opportunity" does not require a competent authority to provide extensions of deadlines.

2. The Parties shall ensure that their competent authorities grant an authorisation as soon as it is established, in the light of an appropriate examination, that the applicant meets the conditions for obtaining it.
3. The Parties shall ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions²⁷.

Article 5.13

Fees

1. For all economic activities other than financial services, each Party shall ensure that the authorisation fees charged by its competent authorities are reasonable and transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity.
2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.
3. Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions or mandated contributions to universal service provision.

Article 5.14

Assessment of qualifications

If a Party requires an examination to assess the qualifications of an applicant for authorisation, it shall ensure that its competent authorities schedule such an examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. To the extent practicable, each Party shall accept requests in electronic format to take such examinations and shall consider the use of electronic means in other aspects of examination processes.

Article 5.15

Objectivity, impartiality and independence

If a Party adopts or maintains a measure relating to authorisation, it shall ensure that the competent authority concerned processes an application, reaches and administers its decisions

²⁷ Competent authorities are not responsible for delays due to reasons outside their competence.

objectively and impartially and in a manner independent from the undue influence of any person carrying out the economic activity for which authorisation is required.

Article 5.16

Publication and information available

If a Party requires authorisation, the Party shall promptly publish the information necessary for persons carrying out or seeking to carry out the activities referred to in paragraph 1 of Article 5.8 for which the authorisation is required to comply with the requirements, technical standards and procedures for obtaining, maintaining, amending and renewing such authorisation²⁸. Such information shall include, to the extent it exists:

- (a) the licensing and qualification requirements and procedures;
- (b) contact information of relevant competent authorities;
- (c) authorisation fees;
- (d) applicable technical standards;
- (e) procedures for appeal or review of decisions concerning applications;
- (f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;
- (g) opportunities for public involvement, such as through hearings or comments; and
- (h) indicative timeframes for the processing of an application.

For the purposes of this Section, "publish" means to include in an official publication, such as an official journal, or on an official website. Parties are encouraged to consolidate electronic publications into a single portal.

Article 5.17

Technical standards

A Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage

²⁸ The Parties may grant authorisations without complying with this Article in any of the following cases related to hydrocarbons:

- a) the area has been subject to a previous procedure complying with this Article which has not resulted in an authorisation being granted;
- b) the area is available on a permanent basis for the exploration for or production; or
- c) the authorisation granted has been relinquished before its date of extinction.

any body, including relevant international organisations, designated to develop technical standards to do so through open and transparent processes.

Article 5.18

Development of measures

If a Party adopts or maintains measures relating to authorisation, it shall ensure that:

- (a) such measures are based on clear, objective, and transparent criteria which may include, inter alia, competence and the ability to supply a service or any other economic activity, including to do so in compliance with a Party's regulatory requirements, such as health and environmental requirements, it being understood that competent authorities may assess the weight to be given to each criterion;
- (b) the procedures are impartial, easily accessible to all applicants, and are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist; and
- (c) the procedures do not in themselves unjustifiably prevent fulfilment of the requirements.

SECTION C

ADDITIONAL PROVISIONS ON INVESTMENT

Article 5.19

Scope

This Section applies to measures adopted or maintained by the Parties affecting investment as defined in Article 5.1.

Article 5.20

Transparency of the investment framework

1. Each Party shall make available via electronic means such as a website and, where practicable accessible through a single portal, and update to the extent possible and as appropriate, the following:
 - (a) laws and regulations specifically addressing investment, where they exist;
 - (b) restrictions and conditions applying to investment; and

- (c) contact information of relevant competent authorities involved in the authorisation of investment.
2. Each Party shall make available, where practicable via electronic means such as a website and accessible through the single portal referred to in paragraph 1, and update to the extent possible and as appropriate, a description that informs another Party's government agencies, investors, and other interested parties of the practical steps needed to invest in its territory. This description should cover, inter alia, the requirements and procedures related to:
- (a) company establishment and business registration;
 - (b) connecting to essential infrastructure such as electricity and water supply;
 - (c) the acquisition and registering of property such as land ownership rights;
 - (d) construction permits;
 - (e) resolving insolvency;
 - (f) capital transfers and payments;
 - (g) convertibility of currency;
 - (h) the payment of taxes;
 - (i) access to finance, especially for Micro, Small and Medium-sized Enterprises (MSMEs); and
 - (j) public incentives offered to investors.
3. No fee shall be imposed on any investor in a Party's territory for access to the information provided under this Article or under Article 5.3 [publication requirements].

Article 5.21

Linkages with the host economy

Each Party is encouraged to make available to investors and persons seeking to invest information on domestic suppliers with a view to strengthening linkages with the local economy, increasing the competitiveness of domestic suppliers and enhancing the contribution of investment to sustainable development.

Article 5.22

Investment facilitation focal points

1. In a manner consistent with its legal system, each Party shall maintain or establish appropriate mechanisms, referred to as “investment facilitation focal points” hereinafter, for serving as first points of contact for investors regarding the measures affecting investment covered by this Chapter. Each Party may choose to address such enquiries through either the enquiry and contacts points established under Article 5.5 [Enquiries] or any other mechanism as appropriate.
2. Each Party shall ensure that investment facilitation focal points respond to enquiries from investors as well as from investment facilitation focal points established by another Party under this Article in order to contribute to the effective application of this Chapter.
3. If investment facilitation focal points are unable to respond to an enquiry under paragraph 2, they shall provide the necessary assistance to the originator of the enquiry to ensure that the relevant information can be obtained.
4. Each Party shall ensure that enquiries and other information corresponding to this Article can be submitted via electronic means.
5. Any information provided under this Article shall be without prejudice as to whether the measure is consistent with this Chapter.

Article 5.23

Problem-solving mechanisms

1. Each Party shall endeavour to establish or maintain appropriate mechanisms with the task of seeking to effectively resolve problems for investors or persons seeking to invest that may arise from the application of any measure of general application covered by this Chapter.
2. Such processes should be easily accessible, including for micro, small and medium enterprises (MSMEs), time-bound and transparent. They shall be without prejudice to any appeal or review procedures which the Parties establish or maintain. They shall also be without prejudice to the dispute settlement mechanism under this Agreement.

Article 5.24

Fees and charges

1. Each Party shall accord an adequate time period between the publication of new or amended fees and charges related to authorisation procedures for investment, or information enabling investors to comprehend the calculation of those fees and charges, and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.
2. Each Party shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for fees and charges collected by relevant competent authorities involved in the authorisation of investments.

Article 5.25

Regulatory coherence and impact assessments

1. The Parties recognise the importance of an effective, consistent, transparent and predictable regulatory framework for investment.
2. Each Party is encouraged to carry out, in accordance with its respective rules and procedures, an impact assessment of major²⁹ measures of general application it is preparing which fall within the scope of this Chapter.
3. The Parties acknowledge that, when conducting such impact assessments, the potential impact of the proposed measure on MSMEs and on sustainable development should be taken into account.

Article 5.26

Domestic inter-agency coordination

1. The Parties recognise the importance of close domestic coordination between the authorities and agencies responsible for the regulation and implementation of measures and procedures related to investment as a means to facilitate, attract, retain, and expand investment.
2. To this end, each Party shall endeavour to establish or maintain mechanisms to coordinate activities with the aim of:
 - (a) facilitating investment;
 - (b) encouraging regulatory coherence and predictability of government measures and procedures; and
 - (c) promoting the coherence of central, regional and local investment measures and procedures.
3. To facilitate the task of coordination, each Party is encouraged to designate a lead government agency in a manner consistent with its legal system.

Article 5.27

Stakeholder consultation and periodic reviews

²⁹ Each Party may determine what constitute “major” measures of general application for the purposes of this Chapter.

1. Each Party is encouraged to review, at intervals it deems appropriate, its measures of general application covered by this Chapter affecting investment in order to determine whether specific measures it has implemented should be modified, streamlined, expanded or repealed, so as to make the Party's investment framework more effective in achieving its policy objectives and in addressing the specific needs of MSMEs.
2. Each Party is encouraged to periodically review its fees and charges with a view to reducing their number and diversity.
3. Each Party is encouraged, in its review exercises, to consider stakeholder feedback and make use of relevant international performance indicators such as the World Bank's ease of doing business score. The Parties are invited to share with the [Sub-Committee on the Facilitation of Investment and of Trade in Services]/[or EPA Committee] their experiences in carrying out periodic reviews and policy recommendations resulting therefrom.

[Note: reference to the Sub-Committee to be adapted on the basis of the institutional provisions]

Article 5.28

Dispute settlement

Chapter X [Dispute Settlement] shall not apply to Articles 5.25 [Regulatory coherence and impact assessments], Article 5.26 [Domestic inter-agency coordination], and Article 5.27 [Stakeholder consultation and periodic reviews].

[Article 5.29

Corporate social responsibility and responsible business conduct]

[Note: provisions regarding corporate social responsibility and responsible business conduct have been tabled by the EU under the chapter on Trade and Sustainable Development. To avoid overlaps, it is not proposed to repeat those provisions here]

SECTION D

COOPERATION AND INSTITUTIONAL PROVISIONS

Article 5.30

Technical assistance and capacity-building

1. The Parties recognise the importance of technical assistance and capacity-building and commit to cooperate on strengthening the investment climate in the EPA ESA States and supporting the implementation of this Chapter.
2. Such activities shall be carried out within the framework of the rules and relevant procedures of EU development cooperation and instruments.
3. Requests for assistance should be based on needs identified and in accordance with domestic investment facilitation reforms. Assistance [shall/will] be subject to mutually agreed terms and conditions.
4. The Parties in the framework of the [Sub-Committee on the Facilitation of Investment and of Trade in Services]/[or EPA Committee] shall:
 - (a) exchange information and review progress on technical assistance and support for capacity building on the implementation of this Chapter; and
 - (b) identify needs for technical assistance and capacity-building.

[Note: alternatively, this article may refer to the relevant provisions of the development cooperation chapter of the EPA]

Article 5.31

[Sub-Committee on the Facilitation of Investment and of Trade in Services]/[Consultation on the Facilitation of Investment and of Trade in Services]

The [Sub-Committee on Facilitation of Investment and of Trade in Services]/[or EPA Committee] shall provide a forum for the Parties to hold exchanges on issues related to the facilitation of investment and of trade in services, including:

- (a) difficulties which may arise in the implementation of this Chapter, including obstacles to establishment and investment retention;
- (b) possible improvements of this Chapter, in particular in the light of experience and developments in other international fora and under other agreements concluded by the Parties;
- (c) exchange of best practices as regards the implementation of this Chapter; and
- (d) ongoing enquiries as referred to in Article 5.5 [Enquiries] and requests for administrative assistance.

[Note: to be adapted depending on the institutional framework of the agreement]

CHAPTER VI

SECTORAL REGULATORY FRAMEWORK

SECTION A

DELIVERY SERVICES

Article 6.1

Scope and Definitions

1. This Section sets out the principles of the regulatory framework for the supply of all delivery services.
2. For the purposes of this Section:
 - (a) "delivery services" means postal, courier, express delivery or express mail services, which include the following activities: the collection, sorting, transport, and delivery of postal items;
 - (b) "express delivery services" means the 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 the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt;
 - (c) "express mail services" means international express delivery services supplied through the EMS Cooperative, the voluntary association of designated postal operators under Universal Postal Union (UPU);
 - (d) "licence" means an authorisation that a regulatory authority of a Party may require of an individual supplier in order for that supplier to offer postal and courier services;
 - (e) "postal item" means an item up to 31.5 kg addressed in the final form in which it is to be carried by any type of supplier of delivery services, whether public or private, and may include items such as a letter, parcel, newspaper or catalogue;

- (f) "postal monopoly" means the exclusive right to supply specified delivery services within a Party's territory or a subdivision thereof pursuant to the law of that Party; and
- (g) "universal service" means the permanent supply of a delivery service of specified quality at all points in the territory of a Party or a subdivision thereof at affordable prices for all users.

Article 6.2

Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain and to decide on its scope and implementation. Any universal service obligation shall be administered in a transparent, non-discriminatory and neutral manner with regard to all suppliers subject to the obligation.
2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to this service over other international express delivery services.

Article 6.3

Universal Service Funding

Each Party shall not impose fees or other charges on the supply of a non-universal delivery service for the purposes of funding the supply of a universal service³⁰.

Article 6.4

Prevention of Market Distortive Practices

³⁰ This paragraph does not apply to generally applicable taxation measures or administrative fees.

Each Party shall ensure that suppliers of delivery services subject to a universal service obligation or postal monopolies do not engage in market distortive practices such as:

- (a) using revenues derived from the supply of the service subject to a universal service obligation or from the postal monopoly to cross-subsidise the supply of an express delivery service or any delivery service which is not subject to a universal service obligation, or
- (b) unjustifiably differentiating among customers with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

Article 6.5

Licences

1. If a Party requires a licence for the provision of delivery services, it shall make publicly available:
 - (a) all the licensing requirements 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.
2. The procedures, obligations and requirements of a licence shall be transparent, non-discriminatory and based on objective criteria.
3. If a licence application is rejected by the competent authority, it shall inform the applicant of the reasons for the rejection in writing. Each Party shall establish an appeal procedure through an independent body available to applicants whose licence has been rejected. This body may be a court.

Article 6.6

Independence of the Regulatory Authority

1. Each Party shall establish or maintain a regulatory authority which shall be separate from, and not accountable to, any supplier of delivery services. If a Party owns or

controls a supplier of delivery services, it shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. The regulatory authority shall perform its tasks in a transparent and timely manner and have adequate financial and human resources to carry out the task assigned to them. Its decisions shall be impartial with respect to all market participants.

SECTION B

TELECOMMUNICATIONS SERVICES

Article 6.7

Scope and Definitions

1. This Section sets out principles of the regulatory framework affecting telecommunications networks and services liberalised pursuant to this Title.
2. For the purpose of this Section:
 - (a) "essential facilities" means facilities of a public telecommunications network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
 - (b) "interconnection" means the linking with suppliers of public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
 - (c) "leased circuit" means telecommunications services or facilities, including those of a virtual nature, that set aside capacity for the dedicated use of, or availability to, a user between two or more designated points;
 - (d) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation (having regard to price

and supply) in a relevant market for telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;

- (e) "number portability" means the ability of subscribers who so request to retain the same telephone numbers, at the same location in the case of a fixed line, without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services;
- (f) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services between network termination points;
- (g) "public telecommunications service" means any telecommunications service that is offered to the public generally;
- (h) "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- (i) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and services covered by this Section;
- (j) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals over telecommunications networks, but not a service providing, or exercising editorial control over, content transmitted using telecommunications networks and services;
- (k) "universal service" means the minimum set of services of specified quality that must be made available to all users, or to a set of users, in the territory of a Party, or in a subdivision thereof, regardless of their geographical location and at an affordable price; and
- (l) "user" means any natural or juridical person using a public telecommunications service.

Article 6.8

Telecommunications Regulatory Authority

Each Party shall establish or maintain a telecommunications regulatory authority that:

- (a) is separate from, and not accountable to, any supplier of telecommunications networks, telecommunications services or telecommunications equipment;
- (b) does not hold a financial interest or maintain an operating or management role in any such supplier;
- (c) uses procedures and issues decisions that are impartial with respect to all market participants;
- (d) acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it by law to enforce the obligations set out in Articles 6.10, 6.11, 6.13, and 6.14;
- (e) has the regulatory power, as well as adequate financial and human resources, to carry out those tasks;
- (f) has the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information³¹, including financial information, necessary to carry out those tasks; and
- (g) exercises its powers transparently and in a timely manner.

Article 6.9

Licencing and Authorisation

1. Authorisation to provide public telecommunications transport networks or services should in principle be granted without a formal licencing procedure, so that the supplier may start providing its networks or services without having to wait for a decision by the telecommunications regulatory authority.
2. If a Party requires a licence for the provision of telecommunications networks or services, it shall make publicly available:

³¹ Information requested shall be treated in accordance with the requirements of commercial confidentiality.

- (a) the types of networks or services requiring a licence;
 - (b) all the licensing criteria, applicable procedures, and the period of time normally required to reach a decision concerning an application for a licence; and
 - (c) the terms and conditions of individual licences.
3. A Party which requires a licence for the provision of telecommunications networks or services shall ensure that an applicant receives in writing the reasons for the denial, the refusal to renew a licence, the revocation of a licence, or the imposition of supplier-specific conditions. In such cases, an applicant shall have a right of appeal before an appeal body.
 4. Administrative fees imposed on suppliers shall be objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Section³².

Article 6.10

Access and Use

1. Each Party shall ensure that any covered enterprise or service supplier of another Party is accorded access to and use of public telecommunications networks or services on reasonable and non-discriminatory³³ terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 to 5 of this Article.
2. Each Party shall ensure that covered enterprises or service suppliers of another Party have access to and use of any public telecommunications network or service offered within or across its border, including private leased circuits, and to this end shall ensure, subject to paragraph 5, that such enterprises and suppliers are permitted:

³² Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

³³ For the purposes of this Article, "non-discriminatory" means national treatment and most-favoured-nation as defined in Articles 2.3, 2.4, 3.3, and 3.4, as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services in like situations.

- (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to conduct their operations;
 - (b) to interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another covered enterprise or service supplier; and
 - (c) to use operating protocols of their choice in their operations, other than as necessary to ensure the availability of telecommunications services to the public generally.
3. Each Party shall ensure that covered enterprises or service suppliers of another Party may use public telecommunications networks and services for the movement of information within and across borders, including for their intra-corporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of a Party.
4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute either a disguised restriction on trade in services or a means of arbitrary or unjustifiable discrimination or of nullification or impairment of benefits under this Title.
5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services other than as necessary:
- (a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available to the public generally; or
 - (b) to protect the technical integrity of public telecommunications networks or services.

Article 6.11

Resolution of Telecommunications Disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations that arise from this section, and upon the request of either party involved in the dispute, the

telecommunications regulatory authority issues a binding decision within a reasonable timeframe to resolve the dispute.

2. The decision by the telecommunications regulatory authority shall be made available to the public, having regard to the requirements of commercial confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.
3. The procedure referred to in paragraphs 1 and 2 shall not preclude either party concerned from bringing an action before a judicial authority.

Article 6.12

Competitive Safeguards

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

- (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 6.13

Interconnection

1. Each Party shall ensure that a supplier of public telecommunications networks or services has the right and, when requested by another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services.
2. Each Party shall ensure that major suppliers of public telecommunications networks or services provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

- (a) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) and of a quality no less favourable than that provided for the own like services of such major supplier, or for like services of its subsidiaries or other affiliates;
 - (b) in a timely fashion, on terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network elements 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.
3. The procedures applicable for interconnection to a major supplier shall be made publicly available.
 4. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers as appropriate.
 5. A service supplier requesting interconnection with a major supplier will have recourse, either at any time or after a reasonable period of time which has been made publicly known, to the telecommunications regulatory authority to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

Article 6.14

Access to Major Suppliers' Essential Facilities

1. Each Party shall ensure that a major supplier makes its essential facilities available to suppliers of public telecommunications networks or services on reasonable, transparent and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, if this is necessary to achieve effective competition.
2. If a decision by the telecommunications regulatory authority is required to ensure compliance with paragraph 1:

- a. such a decision shall be justified on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority;
- b. the telecommunications regulatory authority shall be empowered to:
 - i. determine those essential facilities required to be made available by a major supplier; and
 - ii. require a major supplier to offer access on an unbundled basis to its network elements that are essential facilities.

Article 6.15

Scarce Resources

1. Each Party shall ensure that the procedures for allocation use of scarce resources, including frequencies, numbers and rights of way, is carried out in an objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of general interest objectives. Procedures, and conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.
2. The current use of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.
3. Measures of a Party allocating and assigning spectrum and managing frequency are not *per se* inconsistent with Articles 2.2 and 3.2 [Market Access]. 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 telecommunications services, provided that it does so in a manner consistent with the this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

Article 6.16

Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.

2. Each Party shall administer its universal service obligations in a transparent, non-discriminatory and competitively neutral manner. Universal service obligations shall not be more burdensome than necessary for the kind of universal service defined by the Party.
3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services. Such designation shall be made through an efficient, transparent and non-discriminatory mechanism.
4. If a Party decides to compensate the universal service suppliers, it shall ensure that such compensation does not exceed the net cost caused by the universal service obligation.

Article 6.17

Number Portability

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

Article 6.18

Open internet access

Subject to applicable policies, laws and regulations, each Party should maintain or adopt appropriate measures to ensure that end-users in its territory are able to:

- (a) access, distribute and use services and applications of their choice available on the Internet, subject to reasonable and non-discriminatory network management;
- (b) connect devices of their choice to the Internet, provided that such devices do not harm the network; and
- (c) have access to information on the network management practices of their Internet access service supplier.

Article 6.19

Confidentiality of Information

1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements pursuant to Articles 6.10, 6.13, and 6.14 use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
2. Each Party shall ensure the confidentiality of communications and related traffic data transmitted in the use of public telecommunications networks or services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

SECTION C

FINANCIAL SERVICES

Article 6.20

Scope

1. This Section applies to measures affecting the supply of financial services liberalised pursuant to Chapters II, III, and IV of this Title.
2. For the purposes of this Section, "services supplied or activities performed in the exercise of governmental authority" referred to in point (t) of Article 1.2 means the following:
 - (a) activities conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (b) activities forming part of a statutory system of social security or public retirement plans; and
 - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of a Party or its public entities.
3. For the purposes of the application of point (t) of Article 1.2 to this Section, if a Party allows any of the activities referred to in point 2(b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include those activities.
4. Point (t) of Article 1.2 does not apply to services covered by this Section.

Article 6.21

Definitions

For the purposes of this Section and of Chapters II, 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 and includes the following activities:
 - (i) insurance and insurance-related services
 - (A) direct insurance (including co-insurance):
 - (aa) life;
 - (bb) non-life;
 - (B) reinsurance and retrocession;
 - (C) insurance intermediation, such as brokerage and agency; and

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

(ii) banking and other financial services (excluding insurance):

(A) acceptance of deposits and other repayable funds from the public;

(B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(C) financial leasing;

(D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(E) guarantees and commitments;

(F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(aa) money market instruments (including cheques, bills, certificates of deposits);

(bb) foreign exchange;

(cc) derivative products including, but not limited to, futures and options;

(dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(ee) transferable securities;

(ff) other negotiable instruments and financial assets, including bullion;

(G) 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;

(H) money broking;

- (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (K) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - (L) advisory, intermediation and other auxiliary financial services on all the activities listed in points (A) to (K), 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 supply or supplies financial services and does not include a public entity;
- (c) "public entity" means:
- (i) 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
 - (ii) 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 another Party; and
- (e) "self-regulatory organisation" means any non-governmental body, including a securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central, regional or local governments or authorities, where applicable.

Article 6.22

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; or
 - (b) ensuring the integrity and stability of the Party's financial system.
2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.
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 6.23

International Standards

The Parties shall make their best endeavours to ensure that internationally agreed standards in the financial services sector for regulation and supervision, for the fight against money laundering and terrorist financing, and for the fight against tax evasion and avoidance are implemented and applied in their territory. Such internationally agreed standards are, inter alia, those adopted by the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), in particular its "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors (IAIS), in particular its "Insurance Core Principles", the International Organisation of Securities Commissions (IOSCO), in particular its "Objectives and Principles of Securities Regulation", the Financial Action Task Force (FATF), the Inclusive Framework on Base Erosion and Profit Shifting and

the Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organisation for Economic Cooperation and Development (OECD).

Article 6.24

Transparent Regulation

Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

Upon the request of an applicant, the concerned Party shall inform the applicant of the status of its application. If the concerned Party requires additional information from the applicant, it shall notify the applicant without undue delay.

Article 6.25

Financial Services new to the Territory of a Party

1. Each Party shall permit a financial service supplier of another Party established in its territory to supply any new financial service that it would permit its own financial service suppliers to supply in accordance with its law in like situations, provided that the introduction of the new financial service does not require the adoption of a new law or amendment of an existing law. This shall not apply to branches of a Party established in the territory of another Party.
2. A Party may determine the institutional and legal form through which the service may be supplied and require authorisation for the supply 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 6.26

Self-regulatory Organisations

Where a Party requires membership of, participation in, or access to, any self-regulatory organisation in order for financial service suppliers of another Party to supply financial services in or into the territory of the first Party, that Party shall ensure observance by that

self-regulatory organisation of the obligations under Articles 2.3 (Establishment - National Treatment), 2.4 (Establishment - Most Favoured Nation Treatment), 3.3 (Cross-border - National Treatment), and 3.4 (Cross-border - Most Favoured Nation Treatment).

Article 6.27

Clearing and Payment Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of another 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 Article shall not confer access to the Party's lender of last resort facilities.

SECTION D

INTERNATIONAL MARITIME TRANSPORT SERVICES

Article 6.28

Scope and Definitions

1. In addition to Chapters II, III, and IV of this Title, this Section shall apply to measures of a Party affecting the supply of international maritime transport services.
2. For the purpose of this Section and Chapters II, III, and IV of this Title:
 - (a) "international maritime transport services" means the transport of passengers or cargo by sea-going vessels between a port of one Party and a port of another Party or of a third country, or between ports of different Member States of the European Union, including 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 document³⁴, but does not include 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 document³⁵;

(c) "international cargo" means cargo transported between a port of one Party and a port of another Party or of a third country, or between ports of different Member States of the European Union;

(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;

(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:

(i) the loading or discharging of cargo to or from a ship;

(ii) the lashing or unlashings of cargo; and

(iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge;

(f) "customs clearance services" means activities consisting in carrying out on behalf of another Party customs formalities concerning import, export or through transport of

³⁴ For greater certainty, a single transport document may be a single contract that is supported by one or several bills of lading or by any document that proves the receipt of the goods to be carried.

³⁵ Ibid.

cargoes, irrespective of whether this service is the main activity of the service supplier or a usual complement of its main activity;

(g) "container station and depot services" means activities consisting in storing, stuffing, stripping, or repairing of containers and making containers available for shipments, whether in port areas or inland;

(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:

(i) 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; and

(ii) 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; and

(j) "port services" means services provided inside a maritime port area or on the waterway access to such area by the managing body of a port, its subcontractors, or other service providers to support the transport of cargo or passengers.

Article 6.29

Obligations

1. In view of the existing levels of liberalisation between the Parties in international maritime transport, each Party shall implement the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory

basis by:

- (a) according to ships flying the flag of another Party or operated by service suppliers of another Party treatment no less favourable than that accorded to its own ships, with regard to, inter alia:
 - i. access to ports;
 - ii. the use of port infrastructure;
 - iii. the use of maritime auxiliary services; and
 - iv. customs facilities and the assignment of berths and facilities for loading and unloading, including related fees and charges; and
 - (b) making available to international maritime transport suppliers of another Party on terms and conditions which are both reasonable and no less favourable than those applicable to its own suppliers or vessels or to vessels or suppliers of a third country (including fees and charges, specifications and quality of the service to be provided) the following port services: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth, berthing and unberthing services and shore-based operational services essential to ship operations, including communications, water and electrical supplies.
2. In applying the principle referred to in paragraph 1, a Party shall not:
- (a) 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; or
 - (b) adopt or maintain a measure that requires all or part of any international cargo to be transported exclusively by vessels registered in that Party or owned or controlled by natural persons of that Party.

TITLE []

DIGITAL TRADE

Contents

Chapter I General Provisions

Chapter II Data Flows and Personal Data Protection

Chapter III Special Provisions

Chapter I

General Provisions

Article 1

Objective

The objective of the Title is to facilitate digital trade, address unjustified barriers to trade enabled by electronic means and ensure an open, secure and trustworthy online environment for businesses and consumers.

Article 2

Scope

1. This Title applies to measures of a Party affecting trade enabled by electronic means.
2. This Title does not apply to audio-visual services.

Article 3

Right to regulate

The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education,

safety, the environment including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.

Article 4

Exceptions

For greater certainty, nothing in this Title prevents Parties from adopting or maintaining measures in accordance with Articles 56 [general exceptions], 57 [security exceptions] and 6.22 [prudential carve-out] for the public interest reasons set out therein.

Article 5

Definitions

1. The definitions in Article 1.2 [Definitions] of Title X on Investment Liberalisation and Trade in Services apply to this Title.
2. The definition of "public telecommunications service" in point (g) of Article 6.7 [Definitions] of Section B (telecoms) of Chapter VI of Title X [Investment Liberalisation and Trade in Services] applies to this Title.
3. For the purposes of this Title:
 - (a) "consumer" means any natural person using a public telecommunications service for other than professional purposes;
 - (b) "direct marketing communication" means any form of commercial advertising by which a natural or legal person communicates marketing messages directly to a user via a public telecommunications service and covers at least electronic mail and text and multimedia messages (SMS and MMS);
 - (c) "electronic authentication" means an electronic process that enables the confirmation of:
 - (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;

(e) "electronic signature" means data in electronic form which is attached to or logically associated with other data in electronic form that:

(i) is used by a natural person to agree on the data in electronic form to which it relates; and

(ii) is linked to the data in electronic form to which it relates in such a way that any subsequent alteration in the data is detectable;

(f) "electronic trust service" means an electronic service consisting of:

(i) the creation, verification and validation of electronic signatures, electronic seals, electronic time stamps, electronic registered delivery services and certificates related to those services;

(ii) the creation, verification and validation of certificates for website authentication; or

(iii) the preservation of electronic signatures, seals or certificates related to those services; and

(h) "user" means any natural or legal person using a public telecommunications service.

Chapter II

Data flows and personal data protection

Article 6

Cross-border data flows

1. The Parties are committed to ensuring cross-border data flows to facilitate trade in the digital economy. To that end, cross-border data flows shall not be restricted between the Parties by a Party:
 - (a) requiring the use of computing facilities or network elements in that Party's territory for the processing of data, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of that Party;
 - (b) requiring the localisation of data in that Party's territory for storage or processing;
 - (c) prohibiting the storage or processing of data in the territory of another Party; or
 - (d) making the cross-border transfer of data contingent upon use of computing facilities or network elements in that Party's territory or upon localisation requirements in that Party's territory.
2. The Parties shall keep the implementation of this provision under review and assess its functioning within three years of the entry into force of this Agreement. A Party may at any time propose to another Party to review the list of restrictions listed in paragraph 1. Such request shall be accorded sympathetic consideration.

Article 7

Protection of personal data and privacy

1. A Party recognises that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to trust in the digital economy and to the development of trade.
2. A Party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of

rules for the cross-border transfer of personal data. Nothing in this Agreement shall affect the protection of personal data and privacy afforded by the Parties' respective safeguards.

3. A Party shall inform another Party about any safeguard referred to in paragraph 2 that it adopts or maintains.
4. For the purposes of this Agreement, "personal data" means any information relating to an identified or identifiable natural person.

Article 8

Application to the Union of Comoros, the Republic of Madagascar and the Republic of Zimbabwe

Articles 6 and 7 of this Chapter do not apply to the Union of Comoros, the Republic of Madagascar and the Republic of Zimbabwe. However, upon notification by one of such Parties to the EPA Committee of its intention in this regard, Articles 6³⁶ and 7 shall apply to that Party as of the date of notification.

Chapter III

Specific provisions

Article 9

Customs duties on electronic transmissions

1. Electronic transmissions shall be considered as a supply of services within the meaning of Title X [Investment Liberalisation and Trade in Services].
2. The Parties shall not impose customs duties on electronic transmissions.

³⁶ For greater certainty, Article 6 shall apply as modified at the date of notification.

Article 10

No prior authorisation

1. A Party shall not require prior authorisation of the provision of a service by electronic means solely on the ground that a service is provided online, or adopt or maintain any other requirement having an equivalent effect.

A service is provided online when it is provided by electronic means and without the parties being simultaneously present.

2. Paragraph 1 does not apply to telecommunications services, broadcasting services, gambling services, legal representation services or to services of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority.

Article 11

Conclusion of contracts by electronic means

1. Each Party shall ensure that contracts may be concluded by electronic means and that its law neither creates obstacles for the use of electronic contracts nor results in contracts being deprived of legal effect and validity solely on the ground that the contract has been made by electronic means.
2. Paragraph 1 does not apply to the following:
 - (a) broadcasting services;
 - (b) gambling services;
 - (c) legal representation services;
 - (d) services of notaries or equivalent professions involving a direct and specific connection with the exercise of public authority;
 - (e) contracts that establish or transfer rights in real estate;

(f) contracts requiring by law the involvement of courts, public authorities or professions exercising public authority;

(g) contracts of suretyship granted, collateral securities furnished by persons acting for purposes outside their trade, business or profession; or

(h) contracts governed by family law or by the law of succession.

Article 12

Electronic authentication and electronic trust services

1. A Party shall not deny the legal effect and admissibility as evidence in legal proceedings of an electronic document, an electronic signature, an electronic seal or an electronic time stamp or of data sent and received using an electronic registered delivery service solely on the ground that it is in electronic form.
2. A Party shall not adopt or maintain measures that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their transaction; or
 - (b) prevent parties to an electronic transaction from being able to prove to judicial and administrative authorities that the use of electronic authentication or an electronic trust service in that transaction complies with the applicable legal requirements.
3. Notwithstanding paragraph 2, a Party may require that for a particular category of transactions, the method of electronic authentication or trust service is certified by an authority accredited in accordance with its law or meets certain performance standards which shall be objective, transparent and non-discriminatory and only relate to the specific characteristics of the category of transactions concerned.

Article 13

Transfer of or access to source code

1. A Party shall not require the transfer of, or access to, the source code of software owned by a natural or juridical person of another Party.

2. For greater certainty:

(a) the general exceptions, security exceptions, and prudential carve-out referred to in Article 4 apply to measures of a Party adopted or maintained in the context of a certification procedure, and

(b) paragraph 1 does not apply to the voluntary transfer of, or granting of access to, source code on a commercial basis by a natural or legal person of another Party, such as in the context of a public procurement transaction or a freely negotiated contract.

3. Nothing in this Article shall affect:

(a) requirements by a court, administrative tribunal, or competition authority to remedy a violation of competition law;

(b) the protection and enforcement of intellectual property rights; and

(c) the right of a Party to take measures in accordance with Article III of the WTO Government Procurement Agreement as incorporated by Article X of Title X [Public procurement] of this Agreement.

Article 14

Online consumer trust

1. Recognising the importance of enhancing consumer trust in digital trade, a Party shall adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions, including but not limited to measures that:

(a) proscribe fraudulent and deceptive commercial practices;

(b) require suppliers of goods and services to act in good faith and abide by fair commercial practices, including through the prohibition of charging consumers for unsolicited goods and services;

(c) require suppliers of goods or services to provide consumers with accurate information on the goods or services and the terms of the contract (including when they act through intermediary service suppliers, regarding their identity and contact details, the transaction

concerned, the main characteristics of the goods or services, and the full price inclusive of all applicable charges); and

(d) grant consumers access to redress.

2. The Parties recognise the importance of entrusting their consumer protection agencies or other relevant bodies with adequate enforcement powers and the importance of cooperation between these agencies in order to protect consumers and enhance online consumer trust.

Article 15

Unsolicited direct marketing communications

1. Each Party shall ensure that users are effectively protected against unsolicited direct marketing communications.
2. Each Party shall ensure that direct marketing communications are not sent to users who are natural persons unless they have given their consent in accordance with each Party's laws to receiving such communications.
3. Notwithstanding paragraph 2, each Party shall allow natural or legal persons who have collected the contact details of a user in the context of the supply of goods or services, to send direct marketing communications to that user for their own similar goods or services, if such collection and sending is in accordance with conditions laid down in the law of that Party.
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 users to request cessation free of charge and at any moment.
5. Each Party shall provide users with access to redress against suppliers of direct marketing communications that do not comply with the measures adopted or maintained pursuant to paragraphs 1 to 4.

Article 16

Cooperation on regulatory issues with regard to digital trade

1. The Parties shall exchange information on regulatory matters in the context of digital trade, which shall address the following:
 - (a) the recognition and facilitation of interoperable electronic trust and authentication services;
 - (b) the treatment of direct marketing communications;
 - (c) the protection of consumers; and
 - (d) any other matter relevant for the development of digital trade.
2. Paragraph 1 shall not apply to a Party's rules and safeguards for the protection of personal data and privacy, including on cross-border transfers of personal data.