

Mercosur – EU negotiations on services and establishment**DRAFT common text**

Text November 2017

CURRENT PAYMENTS AND CAPITAL MOVEMENTS

Important note: This entire section will be transferred to a transversal section, applicable to several parts of the Agreement. As the wording of this section was carefully chosen and agreed within the Financial Regulators, any changes in this text will require prior consultation with the Financial Regulators.

Article 1 – Capital Account

With regard to transactions on the capital and financial account of the balance of payments, from the entry into force of the Agreement, the Parties shall allow the free movement of capital relating to direct investments made in accordance with the laws of the host country and investments established in accordance with the provisions of Chapter [...] Trade in Services and Establishment, and the liquidation or repatriation of these capitals and of any profit stemming therefrom.

Article 2 – Current account

The Parties shall allow, in freely convertible currency and in accordance with the Articles of Agreement of the International Monetary Fund, any payments and transfers of the current account between the Parties.

Article 3 – Application of laws and regulations relating to capital movements and payments

Nothing in Articles 1 and 2 of this Title shall be construed to prevent a Party from applying in an equitable and non-discriminatory manner, and not in a way that would constitute a disguised restriction on capital movements, transfers and payments, its laws and regulations relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences¹;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and

¹ For greater certainty, this includes anti-money laundering and counter-terrorism (AML/CTF) regulations.

(e) the satisfaction of judgments in adjudicatory proceedings.

Article 4 – Temporary safeguard measures

Where, in exceptional circumstances, capital movements and payments cause or threaten to cause serious difficulties for the operation of the economic and monetary union of the European Union, the European Union may impose safeguard measures that are strictly necessary to address such difficulties for a period not to exceed six months.

Article 5 – Safeguard Measures difficulties

1. Where, in exceptional circumstances, a Member State of Mercosur or a Member State of the European Union that is not a member of the European Monetary Union experiences serious difficulties for the balance-of-payments, including operation of monetary policy or exchange rate policy, or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, transfers or payments.

2. Measures referred to in paragraph 1 shall:

- (a) not treat a Party less favorably than a third country in like situations;
- (b) be consistent with the Articles of the Agreement of the International Monetary Fund, done at Bretton Woods on 22 July 1945, as applicable;
- (c) avoid unnecessary damage to the commercial, economic and financial interests of a Party;
- (d) be temporary, proportional and strictly necessary to address the difficulties and phased out progressively as the situation specified in paragraph 1 improves. If extremely exceptional circumstances arise such that a Party seeks to extend such measures beyond a period of 1 year, it will notify in advance to the other Party regarding the implementation of any extension.

Article 6 – Final provisions

1. Nothing in this Title shall be taken to limit the rights of economic operators of the Parties from benefiting from any more favourable treatment that may be provided for in any existing bilateral or multilateral agreement to which they are parties.

2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote the objectives of this Agreement.