

05/10/2017-1

Mercosur - EU negotiations on services and establishment

DRAFT common text

Text September 2017

CHAPTER [...]

TRADE IN SERVICES AND ESTABLISHMENT

SECTION 1

GENERAL PROVISIONS

ARTICLE 1

OBJECTIVE AND SCOPE

1. The Parties, reaffirming their respective commitments under WTO Agreement hereby lay down the necessary arrangements for the liberalisation of trade in services and establishment.
2. [MSR: Liberalisation shall respect national policy objectives and recognise different development level of the Parties, not only in general terms, but also on a sectorial level. The EU shall assist Paraguay to comply with the obligations of this chapter. To this end, the EU shall give cooperation and flexibility to increase Paraguayan trade in services and establishment".

Taking into account the special situation of Paraguay, considering its landlocked developing country condition, the EU ensures a special and differential treatment to Paraguay. This S&D treatment is reflected in the flexibilities in the adoption of specific commitments, in sectors and modes of supply, as well as to ensure the use of policy instruments that allow Paraguay to cope with negative effects that could take place due to the application of the present Chapter in its economy and in its weaker sectors.]

[Note: The EU does not oppose the principle of recognising asymmetry with respect to Paraguay, but considers that, in such a case, the principle should be part of the general provisions of the Agreement]

- 2bis. Nothing in this Chapter shall be construed to require the privatisation of public services or to impose any obligation with respect to government procurement
3. The provisions of this Chapter shall not apply to subsidies granted or grants provided by a Party, including government-supported loans, guarantees, and insurance.
4. Consistent with the provisions of this Chapter, each Party retains the right to regulate, and to introduce new regulations or to supply services to meet its policy objectives.

5. The provisions of this Chapter shall not apply to the Parties' respective social security systems.
6. In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.
7. The provisions of this Chapter shall not apply to services supplied or activities carried out in the exercise of governmental authority, i. e., to any service which is supplied or any activity which is carried out neither on a commercial basis, nor in competition with one or more service suppliers or investors.
8. This Chapter applies to measures of the Parties affecting trade in services and establishment, with the exception of:
 - (a) national maritime cabotage¹;
 - (b) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) groundhandling services
 - (v) airport operations services
 - (c) [MSR: inland navigation]
 - (d) [EU: audiovisual services];²
 - (e) mining, manufacturing and processing of nuclear materials³;
 - (f) production of or trade in arms, munitions and war material.

Drafters note: definitions in para. 8 are pending conclusion of the article on General Exceptions in the Institutional chapter.

[EU: Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in a Member State of Mercosur or a Member State of the European Union and another port or point located in the same Member State of Mercosur or Member State of the European Union, including on its continental shelf, as provided in the United Nations Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in the Member State of Mercosur or Member State of the European Union.]

[MSR: Not exempting audiovisual content from advertisement services (CPC 871)]

³ "Processing of nuclear materials" includes all the activities contained in UN ISIC Rev 3.1 code 2330

Formatted: English (United States)

Formatted: Font: 12 pt, (Asian) Korean, (Other) English (United States)

Formatted: Font: 12 pt

Formatted: Footnote Text;Final Footnote Text;Nota de rodapé;fn;footnote text;Final Footnote Text Char Char;GM_Fußnotentext;Footnote text;Schriftart: 9 pt;Schriftart: 10 pt;Schriftart: 8 pt;WB-Fußnotentext, Justified, Indent: Left: 0 cm, Hanging: 1,27 cm

Formatted: Footnote Reference;BVI fnr; BVI fnr;(Footnote Reference);Footnote Reference;/Ref;de nota al pie

Formatted: Font: Font color: Red

Formatted: Font:

Formatted: English (United States)

ARTICLE 2
DEFINITIONS

For the purposes of this Chapter:

- (a) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) "measures adopted or maintained by a Party" means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (c) "measures by Parties affecting establishment, the cross-border supply of services, ~~consumption abroad~~, and the entry and temporary presence of natural persons" include measures in respect of:
 - (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the performance of an economic activity, services which are required by those Parties to be offered to the public generally;
 - (iii) the access, including through establishment, of persons of a Party to the territory of the other Party to perform an economic activity in that territory.
- (d) "person" means either a natural person or a juridical person;
- (e) "natural person" means a national ~~[MSR: or permanent resident⁴]~~ of Mercosur or one of the Member States of the European Union according to their respective legislation;
- (f) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association.
- (g) "juridical person of a Party" means a juridical person which is either:
 - (i) constituted or otherwise organized under the law of that Party, and is engaged in substantive business operations in the territory of that Party or the other Party; or
 - (ii) in the case of establishment, owned or controlled by:
 1. natural persons of that Party; or
 2. juridical persons of [that] Party identified under subparagraph (i);

Formatted: Font color: Auto

Drafters Note: the EU notion of effective continuous link will be reflected in the EU schedule of commitments

⁴ ~~[MSR: Where a Party accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting the cross-border trade in s~~
Services, ~~consumption abroad~~ and establishment, its permanent residents shall be covered by the definition of natural persons.]

Formatted: Font color: Auto

Formatted: Font color: Auto

[EU (gbis): Notwithstanding the preceding paragraph, shipping companies established outside the EU or Mercosur and controlled by nationals of a Member State of the EU or of a Member State of Mercosur, respectively, shall also be beneficiaries of the provisions of this Chapter, if their vessels are registered in accordance with their respective legislation in that Member State of the EU or Member State of Mercosur and fly the flag of a Member State of the EU or of a Member State of Mercosur];

- (h) "service supplier" means any person that seeks to supply or supplies a service⁵;
- (i) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (j) "sector" of a service means,
 - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's schedule of specific commitments;
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;

(k) ~~[MRS: "cross-border supply of services" means the supply of a service;~~

~~(i) from the territory of a Party into the territory of the other Party (mode 1);~~

~~(i)(kbis) "consumption abroad" means the supply of a service in the territory of a Party to the service consumer of the other Party (mode 2),~~

~~(ii) [MRS: (k3) "entry and temporary stay of natural persons" (means the supply of a service through the presence of a natural person of a Party in the territory of the other Party) comprise the entry and temporary stay of natural persons for the supply of a service or the establishment of an enterprise in the territory of the other Party (mode 4);]~~

~~Drafter's note: EU prefers not have a definition and MERCOSUR might consider alternative language to propose.~~

~~[MRS 2: "entry and temporary stay of natural persons" means the entry and temporary stay of key personnel, graduate trainees, business services sellers, contractual services suppliers and independent professionals of a Party in the territory of the other Party, in accordance with Section 2 of this Chapter;]~~

~~(l) "enterprise" means a juridical person, branch or representative office set up through establishment, as defined under this Article; [MRS: "enterprise" means a juridical person of a Party, or a branch or a representative office of a juridical person of a Party, set up through the establishment as defined under this Article;~~

~~f,~~

(m) "establishment" means:

- (i) —the constitution, acquisition or maintenance of a juridical person⁶, or

Formatted: No bullets or numbering, Tab stops: Not at 6,03 cm

Formatted: Indent: Left: 0 cm, Hanging: 1,5 cm, No bullets or numbering, Tab stops: Not at 6,03 cm

Formatted: Condensed by 0,1 pt

Formatted: Font color: Red

Formatted: Indent: Left: 0 cm, Hanging: 1,5 cm

Formatted: Font color: Red

Formatted: Font color: Red

Formatted: Font color: Red

Formatted: Font color: Red

Formatted: Font color: Red

Formatted: Font color: Red

Formatted: Font color: Auto

Formatted: Indent: Left: 0 cm, First line: 0 cm

Formatted: Font color: Blue, Condensed by 0,1 pt

⁵ Where the service is not supplied directly by a juridical person, the treatment provided under this Chapter shall be extended to the branch or representative office through which the service is supplied and need not be extended to any parts of the supplier located outside the territory where the service is supplied.

(ii) —the creation or maintenance of a branch or representative office of a juridical person,

within the territory of a Party for the purpose of performing an economic activity;

- (n) “investor” of a Party means any person that [seeks to perform⁷ or] performs an economic activity through establishing an enterprise⁸;

Formatted: Font color: Auto

Formatted: Font color: Auto

[MSR proposes new footnote: it is understood that an investor of a Party seeks to perform an economic activity in the territory of another party only when such investor has taken essential actions and proved obligations necessary to establish an enterprise]

~~[MXMX: For greater certainty, the Parties understand that an investor attempts to make an investment when that investor has taken concrete action or actions to make an investment, such as channelling resources or capital in order to set up a business, or applying for permits or licenses.]~~

- (o) “economic activity” includes any activities of an economic nature whether related to services or non services sectors, subject to the provisions of article 1.
- (p) “airport operations services” mean [EU: the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services.]

Drafters note: MSR suggests that this definition is moved to the Parties schedules where relevant:

ARTICLE 3 MARKET ACCESS

1. With respect to market access through establishment, through the cross-border supply of services, ~~[MSR: through consumption abroad]~~ and through entry and temporary presence of natural persons as provided in Section 2, each Party shall accord to enterprises, investors, services and services suppliers of the other Party, treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex [....] (Lists of Commitments).
2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the

Formatted: Underline

⁶ The terms “constitution” and “acquisition” of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

⁷ ~~[For greater certainty, the Parties understand that an investor seeks to perform an economic activity when that investor has taken concrete actions necessary to establish an enterprise, such as channelling resources or capital in order to set up a business, or applying for a permit or licence]~~

Formatted: Normal, Justified

Formatted: Font color: Red

⁸ Where the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the investor (i.e. the juridical person) shall, nonetheless, through such establishment be accorded the treatment provided for investors under the Agreement. Such treatment shall be extended to the establishment through which the economic activity is performed and need not be extended to any other parts of the investor located outside the territory where the economic activity is performed.

Formatted: Font: 10 pt, Not Italic, Font color: Red, English (United Kingdom)

basis of its entire territory, unless otherwise specified in Annex [...] (Lists of Commitments), are defined as

- (a) limitations on the number of services suppliers or enterprises whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs tests;
 - (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test.
 - (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;
 - (e) measures which restrict or require specific types of legal entity or joint ventures through which an investor or service supplier of the other Party may perform an economic activity.
 - (f) limitations on the total number of natural persons, that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test
3. Economic needs tests shall be described concisely but clearly, indicating the elements that make it inconsistent with the present article and specifying as well the criteria on which the test is based.

ARTICLE 4

NATIONAL TREATMENT

1. In the sectors inscribed in Annex (Lists of Commitments), and subject to any conditions and qualifications set out therein, with respect to all measures affecting establishment⁹, the cross-border supply of services, ~~IMRS: consumption abroad~~ and entry and temporary presence of natural persons as provided in Section 2, each Party shall accord~~grant~~ to enterprises, investors, services and service suppliers- of the other Party treatment no less favourable than that it accords to its own like enterprises, investors, services and service suppliers.
2. A Party may meet the requirement of paragraph 1 by according to enterprises, investors, services and services suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like enterprises, investors, services and services 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 enterprises, investors, services or services suppliers of the Party compared to like enterprises, investors, services and services suppliers of the other Party.

⁹ The obligations in this provision apply also to measures governing the composition of boards of directors of an establishment, such as nationality and residency requirements.

4. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant enterprises, investors, services or services suppliers.

Formatted: Justified, Indent: Left: 0 cm, Hanging: 1,27 cm, Right: 0,11 cm, Tab stops: 1,27 cm, Left

ARTICLE 5

SCHEDULE OF SPECIFIC COMMITMENTS

1. The sectors liberalised by each of the Parties pursuant to this Chapter and, by means of reservations, the market access and national treatment limitations applicable to services, services suppliers, enterprises and investors of the other Party in those sectors are set out in the schedules of specific commitments included in Annex [...], which is an integral part of this Chapter.
2. The Parties shall not apply any market access and national treatment restrictions other than those scheduled in their Schedule of Specific Commitments.

Formatted: Justified, Indent: Left: 0 cm, Hanging: 1,27 cm, Right: 0,11 cm, Tab stops: 1,27 cm, Left

[MSR: ARTICLE 6

MODIFICATION OF SCHEDULES

1. Each Party may modify or withdraw any specific commitment included in its Schedule, at any time after three (3) years have elapsed from the date on which that commitment entered into force. This modification shall be applied in accordance to the principle of non-retroactivity and preserving acquired rights.
2. Each Party shall notify its intent to modify or to withdraw a commitment pursuant to this article to [Agreement administration body] no later than three (3) months before the intended date of implementation of the modification or withdrawal. The notification shall specify the facts, reasons and justifications that motivate the modification of the commitments and shall propose compensatory adjustments to the affected Party.
3. If the other Party consider the compensation inappropriate, the Parties shall enter into negotiation to reach a general level of commitments not less favorable to trade than that provided for in Schedules of specific commitments prior to such negotiations.
4. If agreement is not reached, any of the parties may refer the matter to the mechanism of dispute settlement.]

Dealers note: MRS will consider to remove this depending on how the Institutional chapter deals with amendment of the Agreement.

SECTION 2

TEMPORARY PRESENCE OF NATURAL PERSONS SUPPLYING SERVICES AND FOR BUSINESS PURPOSES

ARTICLE 7

COVERAGE

1. This Section applies to measures of the Parties concerning the entry and temporary stay into their territories of key personnel, graduate trainees, business services sellers, contractual services suppliers and independent professionals in accordance with paragraph 2 and 3 of this Article.
2. The provisions of this Chapter shall not apply to measures affecting natural persons seeking access to employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. This Chapter shall not prevent the parties from applying measures necessary to regulate the entry, the stay and the orderly movement of natural persons in its territory as well as to protect the integrity of its borders, provided that such measures do not nullify or impair the benefits accruing to any Party under the terms of a specific commitment.¹⁰
4. Subject to article 17 and 18, nothing in this Chapter shall prevent a Party from requiring that natural persons must possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.
- 5.

ARTICLE 8

DEFINITIONS

1. For the purpose of this Section:
 - (a) 'Key personnel' means natural persons employed within a juridical person of one Party other than a non-profit organisation and who are responsible for the establishment or the proper control, administration and operation of an enterprise.
'Key personnel' comprises 'business visitors' responsible for establishing an enterprise and 'intra-corporate transferees'.
 - (i) 'Business visitors' means natural persons who are responsible for establishing an enterprise. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Signatory Party.
 - (ii) 'Intra-corporate transferees' means natural persons who have been employed by a juridical person of a Party or have been partners in it for at least one year and who are temporarily transferred to the EU.

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

¹⁰ The sole fact of requiring a visa for natural person of certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

~~enterprise or a head office of that juridical person~~ ~~(that may be a representative office, a subsidiary, a branch or a head company [EU: of that juridical person])~~ in the territory of the other Party. The natural person concerned must belong to one of the following categories:

Formatted: Font color: Auto

1. Managers:

Persons working in a senior position within a juridical person, who primarily direct the management of the ~~[EU: enterprise]~~ ~~for the management of the juridical person controlling the [EU: enterprise]~~, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:

Formatted: Font color: Auto

- directing the establishment or a department or sub-division thereof;
- supervising and controlling the work of other supervisory, professional or managerial employees;
- having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions.

2. Specialists:

Persons working within a juridical person who possess specialised knowledge essential to the enterprise's economic activity, techniques or management. *[Drafting comment: additional requirements to be moved to the EU schedule]* ~~[EU: In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification, including adequate professional experience referring to a type of work or trade requiring specific technical knowledge, including possible membership of an accredited profession.]~~

Formatted: Font color: Auto

Formatted: Font color: Blue

Formatted

- (b) 'graduate trainees' means natural persons who have been employed by a juridical person of one Party for at least one year, who possess a university degree and who are temporarily transferred to an enterprise in the territory of the other Party for career development purposes or to obtain training in business techniques or methods¹¹.
- (c) 'business sellers' means natural persons who are representatives of a juridical person of one Party seeking entry and temporary stay into the territory of the other Party for the purpose of negotiating the sale of services or goods or entering into agreements to sell services or goods for that supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party, nor are they commission agent.
- (d) 'contractual services suppliers' means natural persons employed by a juridical person of one Party which ~~[EU: itself it is not an agency for placement and supply services of personnel nor acting through such an agency]~~ *[Drafting comment: requirement to be moved to the EU schedule]* has ~~[EU: not~~

Formatted: Font color: Auto

Formatted: Strikethrough

Formatted: Font color: Auto

¹¹ The recipient establishment may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training. The competent authorities may require that training be linked to the university degree which has been obtained.

established] in the territory of the other Party and which has concluded a ~~[EU: bona fide]~~ contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services.¹²

Formatted: Not Strikethrough

- (c) 'independent professionals' means natural persons engaged in the supply of a service and established ~~[MRS: settled]~~ as self-employed in the territory of a Party [who have [EU: not established] in the territory of the other Party] and who have concluded a ~~a [EU: bona fide] contract [other [EU: (other than through an agency as defined by CPC 872)] [Drafters comment: requirement to be moved to the EU schedule]~~ to supply services with a final consumer in the ~~[latter] [territory of the other]~~ Party [requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services¹³].

Formatted: Highlight

Formatted: Strikethrough

ARTICLE 9

KEY PERSONNEL AND GRADUATE TRAINEES

For each sector for which commitments have been undertaken for establishment and subject to any reservations listed in Annex [...] (Schedule of Specific Commitments), each Party shall allow investors of the other Party to employ in their enterprise natural persons of that other Party, provided that such employees are key personnel or graduate trainees as defined in Article 12. The temporary entry and stay of key personnel and graduate trainees shall be:

Formatted: Font color: Auto

Formatted: Font color: Auto

- a) for the period of time necessary for the fulfilment of the contract and, up to 3 years for intra-corporate transferees, whichever is less;
- b) up to 60 days in any twelve-month period for business visitors; and
- c) up to 1 year for graduate trainees.

ARTICLE 10

BUSINESS SERVICES SELLERS

For each sector for which commitments have been undertaken for the cross-border supply of services and for establishment, and subject to any reservations listed in Annex [...] (Schedule of Specific Commitments), each Party shall allow the temporary entry and stay of business services sellers for a period of up to 90 days in any twelve month period.¹⁴

Formatted: Font color: Auto

ARTICLE 11

CONTRACTUAL SERVICES SUPPLIERS AND INDEPENDENT PROFESSIONALS

1. For the sectors specified in its schedule of specific commitments, and subject to any reservations listed therein, each Party shall allow the supply of services into its

¹² The service contract referred to under d) shall be a bona fide contract and comply with the laws, regulations and requirements of the Party where the contract is executed.

¹³ The service contract referred to under e) shall be a bona fide contract and comply with the laws, regulations and requirements of the Party where the contract is executed.

¹⁴ This paragraph is without prejudice to the rights and obligations deriving from bilateral visa waiver agreements between individual Mercosur Member States and individual EU Member States

Formatted: Not Highlight

Formatted: Font: Italic

Formatted: Font: Italic

territory by contractual services suppliers of the other Party, through presence of natural persons, subject to the following conditions:

- (a) ~~The natural persons must be engaged in the supply of a service on a temporary basis as employees of a the juridical person employing the natural person must have, which has obtained a service contract [EU: for a period not exceeding twelve months].~~
 - (b) The natural persons entering the other Party must have appropriate education or experience relevant to the service to be provided.
 - (c) The natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during their stay in the other Party.
 - (d) The temporary entry and stay of natural persons within the Party concerned 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.] [MSR: each Party shall allow the temporary entry and stay of contractual services suppliers for a period of time necessary for the fulfilment of the contract and up to one year, with provision for renewal].
 - (e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided.
2. For the sectors specified in its schedule of specific commitments, and subject to any reservations listed therein, each Party shall allow the supply of services into its territory by independent professionals of the other Party, through presence of natural persons, subject to the following conditions:
- (a) ~~The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract [EU: for a period not exceeding twelve months].~~
 - (b) The natural persons entering the other Party must have appropriate educational and professional education relevant to the service to be provided.
 - (c) [EU: The temporary entry and stay of natural persons within the Party concerned 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.] [MSR: each Party shall allow the temporary entry and stay of contractual services suppliers for a period of time necessary for the fulfilment of the contract and up to one year, with provision for renewal].
 - (d) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract, it does not confer entitlement to exercise the professional title of the Party where the service is provided.

**SECTION 3
REGULATORY FRAMEWORK**

**SUB-SECTION 1
PROVISIONS OF GENERAL APPLICATION**

**ARTICLE 12
MUTUAL RECOGNITION**

1. 1. The Parties shall encourage the relevant professional bodies, recognised by competent authority where applicable, in their respective territories to jointly develop and provide recommendations on mutual recognition to the [Joint Committee], for the purpose of the fulfilment, in whole or in part, by investors and service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of investors and service suppliers and, in particular, professional services.
2. [Such recommendations may refer to the following:
 - a) education: accreditation of schools or academic programmes;
 - b) exams: exams for the issuance of licences, including alternative examination methods;
 - c) experience: duration and nature of the experience required for obtaining a licence;
 - d) conduct and ethics: rules of professional conduct and nature of the disciplinary measures in case of breach by professional service providers;
 - e) professional development and renewal of certifications: continuous education and requirements for maintaining professional certificates;
 - f) scope of action: scope and limits of authorized activities;
 - g) local knowledge: required knowledge of aspects such as local laws and regulations, language, geography or weather; and
 - h) consumer protection: requirements other than residence, such as bonds, professional liability insurance and customer reimbursement funds in order to ensure consumer protection and public safety.
 - i) incorporation of the concept of "legal guardian", at the discretion of the parties involved.]
2. On receipt of a recommendation referred to in the preceding paragraph, the [Joint Committee] shall, within a reasonable time, review the recommendation with a view to determine whether it is consistent with this Agreement.
3. When, in conformity with the procedure set in paragraph 1, a recommendation referred to in paragraph 1 has been found to be consistent with this Agreement and there is a sufficient level of correspondence between the relevant regulations of the

Parties, the Parties shall, with a view to implement that recommendation, negotiate, through ~~{EU deletes: their competent authorities}~~ {EU: the relevant authorities or professional bodies or the designees authorized by a Party}, an agreement on mutual recognition of requirements, qualifications, licences and other regulations.

Formatted: Font color: Auto

4. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

ARTICLE 13

TRANSPARENCY

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect this Agreement.
2. The measures referred to in Paragraph one shall include measures applying to all modes of supply, including on the process of entry and temporary stay of the categories of natural persons as defined in article [8]. This information must be kept up to date. Each Party shall facilitate access to the relevant information by indicating to the other Party where relevant publications and websites can be found.
3. Where publication as referred to in paragraphs 1 and 2 is not practicable, such information shall be made otherwise publicly available.
4. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1 and 2 including measures regarding the entry and temporary stay of services suppliers in the meaning of paragraph 2. Each Party shall also establish one or more enquiry points to provide specific information to services providers of the other Party, upon request, on all such matters. Such enquiry points are listed in Annex [...] (Enquiry points). Enquiry points need not be depositories of laws and regulations.
5. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

SUB-SECTION 2

DOMESTIC REGULATION

ARTICLE 14

SCOPE AND DEFINITIONS

1. These disciplines shall only apply to sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply.
2. These disciplines do not apply to measures to the extent that they constitute limitations subject to scheduling under Articles [...] (Market Access) and [...] (National Treatment).

Limited

In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services and establishment are administered in a reasonable, objective and impartial manner.

In regard to measures relating to licensing requirements and procedures, qualification requirements and procedures the Parties shall comply with the provisions and procedures described in this Sub-Section.

The following disciplines apply to measures by the Parties relating to licensing and qualification requirements and procedures that affect:

- (a) cross-border supply of services;
- (b) establishment in their territory of an enterprise, as defined in Article [...] of this Agreement; or
- (c) temporary stay in their territory of categories of natural persons as defined in Article [...].

For the purpose of this [sub-section],

- (a) “Licensing requirements” are substantive requirements other than qualification requirements which a services supplier or investor is required to comply in order to obtain from a competent authority a decision concerning the authorisation to supply a service, or concerning the authorisation to establish an enterprise in order to perform an economic activity, including a decision to amend or renew such authorisation.
- (b) “Competent authority” is any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a decision concerning the authorisation to supply a service, or concerning the authorisation to establish an enterprise in order to perform an economic activity.
- (c) “Licensing procedures” are administrative and procedural rules that a service supplier or an investor seeking authorisation to supply a service or to establish an enterprise must adhere to in order to demonstrate compliance with licensing requirements.
- (d) “Qualification requirements” are substantive requirements relating to the competence of a natural person to supply a service and which are required to be demonstrated for the purpose of obtaining authorization to supply a service.
- (e) “Qualification procedures” are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service.

ARTICLE 15

CONDITIONS FOR LICENSING

Measures relating to licensing requirements shall be based on criteria which are:

- (a) proportionate to a public policy objective;
- (b) clear and unambiguous;
- (c) objective;

- (d) made public in advance.
2. A license should be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining a license have been met.
 3. Where the number of licenses available for a given activity is limited because of the scarcity of available natural resources or technical capacity, the Parties shall apply a selection procedure to potential candidates which is impartial and transparent and provides, in particular, adequate publicity about the launch, conduct and completion of the procedure.
 4. Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, the Parties may take into account public policy objectives.

ARTICLE 16

LICENSING PROCEDURES

1. Licensing procedures shall be clear and made public in advance. Each Party shall ensure that the licensing procedures used by, and the related decisions of, the competent authority are objective and impartial with respect to all applicants.
2. Licensing procedures shall not be dissuasive and shall not unduly complicate or delay the provision of the service.
3. Any licensing fees¹⁵ which the applicants may incur from their application shall be reasonable and shall not in themselves restrict the supply of the service. To the extent practicable those fees should be proportionate to the cost of the authorisation procedures in question.
4. The competent authorities of a Party shall to the extent practicable provide an indicative timeframe for processing an application. Applications will be processed within a reasonable period of time. The period shall run only from the time when all documentation has been received by the competent authorities. When justified by the complexity of the issue, the time period may be extended, by the competent authority, for a reasonable time. The extension and its duration shall be duly motivated and shall be notified to the applicant, to the extent practicable before the original period has expired.
5. In the case of an incomplete application, the applicant shall be informed as quickly as possible of the need to supply any additional documentation. In this case, the period referred to in paragraph 4 may be suspended by the competent authorities, until all documentation has been received by the competent authorities.
6. When a request is rejected because it fails to comply with the required procedures or formalities, the applicant shall be informed of the rejection and of the available means of redress as quickly as possible.

¹⁵ Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

ARTICLE 17

QUALIFICATION REQUIREMENTS

1. Qualification requirements shall be based on criteria which are proportionate to a public policy objective, clear and unambiguous; objective and made public in advance.
2. Where a Party imposes qualification requirements for the supply of a service, it shall ensure that adequate procedures exist for the verification and assessment of qualifications held by service suppliers of the other Party. Where the competent authority considers that membership in a relevant professional association in the territory of another Party is indicative of the level of competence or extent of experience of the applicant, such membership shall be given due consideration.
3. For professional services, the scope of examinations and of any other qualification requirements shall be related to the rights to practice a profession for which authorisation is being sought so as to avoid unduly restricting persons of the other Party from applying.
4. [MSR: Residency requirements shall not be required for sitting examinations.]
Drafters note: Parties agree that residency requirements are subject to listing in respective schedules of specific commitments. MSR will reconsider need for paragraph 4 after revision of offers.
5. Provided an applicant has presented all necessary supporting evidence of qualifications, the competent authority, in verifying and assessing qualifications, shall identify any deficiency and inform the applicant of requirements to meet the deficiency. Such requirements may include, inter alia, course work, examinations and training. The fact that an applicant of a Party presents evidence of qualifications obtained in a non-Party shall not in itself constitute an a priori reason for the other Party to reject the application and refrain from making a proper assessment of the qualifications presented.
6. Where examinations are required, each Party shall ensure that they are scheduled at reasonably frequent intervals. Applicants for examinations shall be allowed a reasonable period to submit applications.
7. Once qualification requirements and any other applicable regulatory requirements have been fulfilled, each Party should ensure that a service supplier is allowed to supply the service without undue delay.

ARTICLE 18

QUALIFICATION PROCEDURES

1. Qualification procedures shall be clear and unambiguous, objective and made public in advance.
2. Each Party shall ensure that the qualification procedures used by, and the related decisions of, the competent authority are impartial with respect to all applicants.
3. An applicant shall, in principle, not be required to approach more than one competent authority for qualification procedures.

4. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. To the extent practicable, the competent authority shall accept applications in electronic format under the same conditions of authenticity as paper submissions.
5. Authenticated copies should be accepted, where possible, in place of original documents.
6. If the competent authority rejects an application, it shall inform the applicant, to the extent practicable in writing, without undue delay. It shall inform the applicant, upon request, of the reasons for rejection of the application and identify any deficiencies and requirements to meet the deficiencies. It shall inform the applicant of the timeframe for an appeal against the decision, if available. It shall permit an applicant to resubmit an application within reasonable time limits.
7. Each Member shall ensure that the processing of an application, including verification and assessment of a qualification, is completed within a reasonable timeframe from the submission of a complete application. Each Member shall endeavour to establish the normal timeframe for processing of an application.
8. Each Member shall ensure that any fees relating to qualification procedures are commensurate with the costs incurred by the competent authorities and do not in themselves restrict the supply of the service.

ARTICLE 19

REVIEW OF ADMINISTRATIVE DECISIONS

Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross border supply of services or temporary presence of natural persons supplying services and for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Parties shall ensure that the procedures in fact provide for an objective and impartial review.

**SUB-SECTION 3
POSTAL SERVICES [EU AND COURIER SERVICES]**

Drafter's note : MERCOSUR is to consult and react on the proposed change of the title,

Formatted: Font: Not Bold, English (United Kingdom),
Highlight

Formatted: Font: Not Bold, English (United Kingdom)

**ARTICLE 20
SCOPE AND DEFINITIONS**

1. This Sub-section sets out principles of the regulatory framework for postal services regarding which the Parties have undertaken specific commitments in accordance with this Chapter.
2. Nothing in this Sub-Section requires a party to liberalise services reserved to one or more designated operators as indicated in its schedule of commitments.
3. For the purpose of this Sub-section:
 - (a) **"Postal service"**¹⁶ means services involving the collecting, sorting, transport and delivery of postal items whether to domestic or foreign destinations, whether priority, non-priority, urgent, express, etc., performed by any operator whether public or private.
 - (b) **"Postal item"** [EU: an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value"].

[MSR to reflect on the basis of the above EU proposal]

[EU new proposal: Postal Item means an item up to 31.5kg addressed in the final form in which it is to be carried by any type of delivery service provider, whether public or private, and may include items such as a letter, parcel, newspaper, catalogue, and others.]

Postal item means an item addressed in the final form in which it is to be carried by a postal service provider, whether public or private, and may include items such as a letter, parcel, newspaper, catalogue and others.

[MSR proposal: to adopt Universal Postal Convention (UPU) definitions:

- letter-post item: item described in and conveyed under the conditions of the Universal Postal Convention and Regulations;
- parcel-post item: item described in and conveyed under the conditions of the Universal Postal Convention and Regulations;
- EMS item: item described in and conveyed under the conditions of the Universal Postal Convention, Regulations and associated EMS instruments]

¹⁶ Postal services cover CPC 7511 and CPC 7512.

- (c) "**Regulatory authority**" for the postal sector means the independent body or bodies charged with the regulation of postal services mentioned in this Sub-section.
- (d) "**Universal service**" means the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users. Its scope and implementation are decided by each Party.
- (e) "**Licence**" means any form of authorisation or permission¹⁷, setting out rights and obligations specific to the postal sector granted to an individual supplier by a regulatory authority, or any other competent body, which is required before supplying a given service.
- (f) "**Essential requirements**" means general non-economic reasons for imposing conditions on the supply of postal services. These reasons may include the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, data protection, environmental protection and regional planning.

ARTICLE 21

PREVENTION OF ANTICOMPETITIVE PRACTICES IN THE POSTAL SECTOR

Each Party shall ensure that a supplier of postal services subject to a universal service obligation or a postal monopoly does not engage in anticompetitive practices such as:

- (a) using revenues derived from the supply of such service to cross-subsidize the supply of an express postal service or any non-universal postal service, and
- (b) [not on the basis of objective and impartial criteria/without objective and impartial criteria] differentiating among customers such as businesses, large volume mailers or consolidators 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 22

UNIVERSAL SERVICES

Any Party has the right to define the kind of universal service obligation it wishes to maintain and may adopt the necessary measures in order to safeguard the implementation, development, and maintenance of the universal postal service. Such measures and obligations will not be regarded as anti-competitive *per se*, provided they are applied in a transparent, non-discriminatory and proportionate way.

¹⁷ For greater certainty this includes concession, registration, declaration, notification individual licences, among others.

ARTICLE 23

LICENCES TO PROVIDE POSTAL SERVICES

1. The Parties may require licences for the supply of postal services. A licence should be granted wherever possible, according to national legislation, upon a simplified authorisation procedure.
2. A licence may require compliance with essential requirements, including quality standards and respect of the exclusive and special rights of designated operators of reserved services or of universal postal services.
3. When a licence is required:
 - (a) the Parties shall make publicly available in an easily accessible form:
 - the rights and obligations resulting from such licence;
 - the criteria, terms and conditions for licensing, and
 - to the extent possible, the period of time normally required to reach a decision concerning an application for a licence.
 - (b) the procedures for the granting of a licence shall be transparent, non-discriminatory, proportionate and based on objective criteria;
 - (c) any licensing fees¹⁸ which the applicants may incur from their application shall be reasonable and do not in themselves restrict the supply of the service.
4. The status of an application for a licence and the reasons for the denial of a licence shall be made known to the applicant upon request. The procedure for appeal through a domestic independent body shall be made available according to the regulation of each Party. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

ARTICLE 24

INDEPENDENCE OF REGULATORY BODIES

The Parties may designate a regulatory authority, whether specific or not for the sector. The regulatory body or bodies for postal services shall be legally separate from, and not accountable to, any supplier of postal services. The decisions of and the procedures used by the regulatory bodies shall be impartial with respect to all market participants.

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

**SUB-SECTION 4
TELECOMMUNICATIONS SERVICES**

**ARTICLE 25
SCOPE AND DEFINITIONS**

1. This Sub-section sets out principles of the regulatory framework for telecommunications services, other than broadcasting¹⁹, regarding which the Parties have undertaken specific commitments in accordance with this Chapter.
2. Nothing in this Sub-Section shall be construed:
 - (i) to require a Party to authorize a service supplier of any other Party to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or
 - (ii) to require a Party (or to require a Party to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.
3. For the purpose of this Sub-section:
 - (a) “telecommunications services” means all services consisting of the transmission and reception of electro-magnetic signals and do not cover the economic activity consisting of the provision of content which requires telecommunications for its transport;
 - (a2) [EU: “telecommunications services” means all services which consist wholly or mainly in the transmission and reception of electro-magnetic signals. Telecommunications services exclude services providing, or exercising, editorial control over the content transmitted].

Drafter’s note: MERCOSUR to consult.

 - (b) “regulatory authority” in the telecommunications sector means the body or bodies charged with the regulation of telecommunications mentioned in this Sub-Section;
 - (c) “essential telecommunications facilities”²⁰ mean facilities of a public telecommunications transport network and 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.

¹⁹ [MSR: Broadcasting is defined as radiocommunication in which transmissions are intended for direct reception by the general public, and may include sound transmission and television transmission. EU: Suppliers of broadcasting services shall be considered as suppliers of public telecommunications transport services and their networks as public telecommunications transport networks, when and to the extent that such networks are also used for providing public telecommunications transport services.]

Drafter’s note: MERCOSUR to consult.

²⁰ [MSR: The provisions of this paragraph shall not apply to the Republic of Paraguay because the domestic legislation does not address the concept of essential facilities.]

- (d) “licence” means any form of authorisation including registration, declaration, notification procedures or others as defined in domestic regulation of a Party, setting out rights and obligations specific to the telecommunications sector granted to an individual supplier by a regulatory authority which is required for the provision of telecommunication service.
- (e) “service supplier” means a person that has been granted a license to supply telecommunication services;
- (f) “major supplier” in the telecommunications sector is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications services as a result of control over essential facilities or the use of its position in that market;
- (f) “interconnection” means linking with suppliers providing telecommunications transport 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;
- (g) “public telecommunications transport service” means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally;
- (g) ‘universal service’ means the set of services of specified quality that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price; its scope and implementation are decided by each Party.

ARTICLE 26

REGULATORY AUTHORITY

1. Regulatory authorities for telecommunications services shall be legally distinct and functionally independent from any supplier of telecommunications services.
2. The regulatory authority shall be sufficiently empowered and resourced to regulate the sector. The competences of a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

Drafter’s note: Parties to consult on the possibility of a reservation for Uruguay regarding spectrum auctions.

4. A supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to a domestic appeal body that is independent of the parties involved and of the regulatory authority. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent domestic judicial or administrative authority.

ARTICLE 27

LICENSES TO PROVIDE TELECOMMUNICATION SERVICES

1. A licence shall be granted, wherever possible, upon a simplified procedure.
2. Terms and conditions for the attributions of numbers and frequencies shall be made publicly available.
3. Where a licence is required:
 - (a) all the licensing criteria shall be made publicly available. A reasonable period of time normally required to reach a decision concerning an application for a licence, after the submission of a complete application, shall be made publicly available;
 - (b) the reasons for the denial of a licence shall be made known in writing to the applicant upon request;
 - (c) the applicant for a licence shall be able to seek recourse to a domestic appeal body in the case where a licence has been unduly denied.

ARTICLE 28

ANTI-COMPETITIVE PRACTICES

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

The anti-competitive practices may include abuse of dominant position, and all practices, conducts or recommendations, individual or concerted, which have the effect of restricting, limiting, hindering, distorting or preventing the current or future competition in the relevant market.

**[EU ARTICLE 28BIS
ACCESS TO ESSENTIAL FACILITIES²¹**

Each Party shall ensure that a major supplier in its territory grants access to its essential facilities, which may include, inter alia, network elements, associated facilities and ancillary services, to suppliers of telecommunications services on reasonable and non-discriminatory²² terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance).]

Drafter's note: MERCOSUR to consult.

²¹ [MSR: The provisions of this paragraph shall not apply to the Republic of Paraguay because the domestic legislation does not address the concept of essential facilities.]

²² For the purpose of this section, non-discrimination is understood to refer to national treatment as defined in Article XX [national treatment], as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunication networks or services under like circumstances".

ARTICLE 29
INTERCONNECTION

1. Any supplier authorised to provide telecommunications services shall have the right to negotiate interconnection with other providers of publicly available telecommunications networks and services. Interconnection should in principle be agreed on the basis of commercial negotiation between the companies concerned.
2. Each Party shall ensure that suppliers that acquire information from another undertaking during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

Drafter's note: MERCOSUL will consult for the next round.

3. Interconnection [MSR: with a ~~major supplier~~] shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:
 - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates, and of a quality no less favourable than that provided for the own like services of such major supplier, or for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
 - (b) [in a timely fashion, on terms and conditions (including technical standards and specifications) that are transparent, reasonable, having regard to economic feasibility, and, [MSR: whenever possible], sufficiently detailed, so that the supplier need not pay for network components or facilities that it does not require for the service to be provided].

Drafter's note: Parties will consult.

- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges [MSR: mutually agreed by the parties] [EU: that reflect the cost of construction of necessary additional facilities] [MSR: when thus provided for in the domestic legislation of the Parties].

Drafter's note: Parties will consult on keeping only the non-bracketed text.

4. The rules applicable for interconnection to a major supplier shall be made publicly available.
5. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers where it is appropriate. [MSR:²³]
6. A service supplier requesting interconnection with a major supplier shall have recourse either at any time or after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory body as referred to in Article 31 of this Sub-Section, to resolve disputes regarding appropriate terms, conditions and rates for interconnection.

²³ [MSR: The provision of this paragraph and the definition of an interconnection offer do not apply to the Republic of Paraguay.]

ARTICLE 30

SCARCE RESOURCES

Any procedures for the allocation and use of scarce resources, including frequencies, shall be carried out in an objective, timely, transparent and non-discriminatory manner. To the extent possible, the current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

ARTICLE 31

UNIVERSAL SERVICES

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain. Such obligations must be administered in a transparent, objective, non-discriminatory and proportionate way.
2. Where the designation of a universal service provider is open to multiple service suppliers, such procedures shall be open to all suppliers. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.

ARTICLE 32

CONFIDENTIALITY OF INFORMATION

Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunication network and publicly available telecommunications 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.

Formatted: Font color: Auto

ARTICLE 33

DISPUTES BETWEEN SUPPLIERS

1. In the event of a dispute arising between suppliers of telecommunications networks or services, the national regulatory authority concerned shall, at the request of either party, issue a binding decision to resolve the dispute in the shortest possible timeframe.
2. When such a dispute concerns the cross-border provision of services, the national regulatory authorities concerned shall co-ordinate their efforts in order to bring about a resolution of the dispute.

ARTICLE 34

INTERNATIONAL MOBILE ROAMING SERVICES

1. Each Party shall ensure that telecommunications services suppliers providing international mobile roaming services for voice, text messaging and data to natural and juridical persons of the other Party provide those services:
 - with a similar quality than that provided to their own customers in their country of establishment; and
 - with clear and readily available information in respect of access to the services and the prices thereof.
2. [EU: The Parties shall establish cooperation mechanisms aimed at monitoring the achievement of the above mentioned points as well as on other issues related to international mobile roaming services that could be identified] [MSR: , such as a reduction in prices.]
3. [MRS: Each Party shall ensure that, within 5 years from the entering into force of this Agreement, telecommunications services suppliers providing international mobile roaming services for voice, text messaging and data to natural and juridical persons of the other Party provide those services without any surcharge additional to the domestic retail price on roaming customers of the other Party.]

**SUB-SECTION 5
FINANCIAL SERVICES**

**ARTICLE 35
DEFINITIONS**

1. This sub-section applies to measures by a Party affecting supply of financial services.
2. For the purposes of this Sub-Section:
 - (i) “Financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:
 - A. Insurance and insurance-related services
 1. direct insurance (including co-insurance):
 - (a) life;
 - (b) non-life;
 2. reinsurance and retrocession;
 3. insurance inter-mediation, such as brokerage and agency; and
 4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
 - B. Banking and other financial services (excluding insurance):
 1. acceptance of deposits and other repayable funds from the public;
 2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 3. financial leasing;
 4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 5. guarantees and commitments;
 6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (a) money market instruments (including cheques, bills, certificates of deposits);
 - (b) foreign exchange;
 - (c) derivative products including, but not limited to, futures and options;
 - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets, including bullion;

Limited

7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 8. money broking;
 9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 11. provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
 12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (ii) “Financial service supplier” means any natural or juridical person of a Member wishing to supply or supplying financial services but the term “financial service supplier” does not include a public entity.
- (iii) “New financial service” means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.
- (iv) “Public entity” means:
1. A government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 2. A private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
- (v) (deleted)
- (vi) For the purposes of this sub-section and only in relation to services covered by this sub-section (financial services) “services supplied in the exercise of governmental authority” means the following:
1. activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 2. activities forming part of a statutory system of social security or public retirement plans; and
 3. other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.
- If a Party allows any of the activities referred to in subparagraphs (2) or (3) of paragraph (vi) to be conducted by its financial service suppliers in competition

Limited

with a public entity or a financial service supplier, “financial services” shall include such activities, which will then fall within the scope of this Chapter.

The general definition of ‘services supplied in the exercise of governmental authority’ included in article 1.7 of this Chapter shall not apply to services covered by this sub-section.

ARTICLE 36

PRUDENTIAL CARVE OUT

1. Nothing in this Agreement shall be construed to prevent a Party from taking measures for prudential reasons, such as:
 - (a) the protection of investors, depositors, financial market participants, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
 - (b) ensuring the integrity and stability of a Party's financial system.
2. Where such measures do not conform with the provisions of this sub-section, they shall not be used as a means of avoiding the Party's commitments or obligations under this sub-section.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual clients or any confidential or proprietary information in the possession of public entities

ARTICLE 37

EFFECTIVE AND TRANSPARENT REGULATION IN THE FINANCIAL SERVICES SECTOR

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt. Such measure shall be provided:
 - (a) by means of an official publication; or
 - (b) in other written or electronic form.
2. Each Party's appropriate financial authority shall make available to interested persons its requirements for completing applications relating to the supply of financial services.
3. On the request of an applicant, the appropriate financial authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.
4. Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, *inter alia*, those adopted by the G20, the Financial Stability Board (FSB), the Basle Committee, the International Association of Insurance Supervisors, the International Organisation of Securities Commissions, recommendations from the Financial Action Task Force on Money Laundering, the Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organisation of Economic Cooperation and Development (OECD), and the

International Financial Reporting Standards (IFRS). For this purpose, the Parties shall cooperate and exchange information and experiences on the matter.

ARTICLE 38
NEW FINANCIAL SERVICES

1. Each Party shall permit a financial services supplier of the other Party, established in its territory, to provide in its territory any new financial services within the scope of the sub-sectors and financial services committed in its schedule and subject to the terms, limitations, conditions and qualifications established in that schedule.
2. A “new financial service” must be in accordance with laws of the party where it is intended to be supplied and subject to the approval, regulation and supervision of competent authorities of that party.

[EU: ARTICLE 39
DATA PROCESSING IN THE FINANCIAL SERVICES SECTOR

1. [MSR: Under the terms and conditions provided by the financial regulators] Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.
 2. Nothing in paragraph 1 restricts the right of a party to protect personal data and privacy, so long as such right is not used to circumvent this agreement.
 3. Each Party shall adopt or maintain adequate safeguards for the protection of privacy and fundamental rights, and freedom of individuals, in particular with regard to the transfer of personal data.
2. ~~As far as the transfer of personal data is concerned, each Party shall adopt adequate safeguards to the protection of privacy and fundamental rights, and freedom of individuals.~~
- 3.

Formatted: Font color: Blue

Formatted: Font color: Blue

Drafters note: the Parties will come back to the EU proposal on Article 39 once the EU has completed internal discussions on its position.

ARTICLE 40
MUTUAL RECOGNITION OF PRUDENTIAL MEASURES

2. A Party may recognise prudential measures of the other Party in determining how the Party’s measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement or may be accorded autonomously.

3. A Party that is a party to an agreement or arrangement with a third party such as those referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for the other Party to negotiate its accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that such circumstances exist.

ARTICLE 41: SELF-REGULATORY ORGANISATIONS

[MSR: On the basis of non-discriminatory regulatory requirements,] When a Party requires membership or participation in, or access to, any self-regulatory body, in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure that such entities accord National Treatment (Article...) to financial service suppliers established in the territory of that Party.

{self-regulatory organisation means a non-governmental body, including any organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by delegation from a Party.}

Formatted: Not Highlight

Formatted: Font: Not Bold, Not Highlight

Formatted: Not Highlight

Drafters note: EU to consult on all the article.

ARTICLE 42: PAYMENT AND CLEARING SYSTEMS

On the basis of regulatory requirements and in accordance with national treatment, each Party shall grant to financial services suppliers of the other Party established in its territory access to payment and clearing facilities operated by public entities and to official funding and refinancing available in the normal course of ordinary business. This paragraph is not intended to confer access to a Party's lender of last resort facilities (national central bank and/or any other monetary authority).

~~**MSR: ARTICLE 43**~~

~~**EXCHANGE OF INFORMATION BETWEEN REGULATORY AUTHORITIES**~~

~~The Parties shall encourage their respective regulatory authorities to exchange information on financial services, especially on prudential regulations and consolidated supervision regimes, subject to each Party's laws on information secrecy and confidentiality.~~

[MSR: to delete this sub-section]

[EU: SUB-SECTION 6

INTERNATIONAL MARITIME TRANSPORT SERVICES

ARTICLE 44

SCOPE, DEFINITIONS AND PRINCIPLES

1. This Section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Chapters II Section 1, III and IV of this Title.

2. Definitions

For the purpose of this Section and Chapters II Section 1, III and IV of this Title:

- (a) 'international maritime transport services' means the transport of passengers and/or cargo by sea-going vessels between a port of XX and a port of the EU or of a third party. This includes the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services.
- (b) 'door-to-door or multimodal transport operations' means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document.
- (c) 'international cargo' means cargo transported between a port of one Party and a port of another Party or of a non-Party, or between a port of one Member State of the EU and a port of another Member State of the EU.
- (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:
 - the loading/discharging of cargo to/from a ship;
 - the lashing/unlashing of cargo;
 - the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- (f) 'customs clearance services' (alternatively 'customs house brokers' services) means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
- (g) 'container station and depot services' means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;

- (h) 'maritime agency services' means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
 - marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
- (i) 'freight forwarding services' means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;
- (j) 'feeder services' means the pre- and onward transportation by sea, between ports located in a Party, of international cargo, notably containerised, en route to a destination outside the territory of that Party.

3. Obligations

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

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

In applying these principles, the parties shall:

- (i) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and
- (ii) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

Limited

- (c) Each Party shall permit international maritime service suppliers of the other Party to have an enterprise in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers.
- (d) The Parties shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.
- (e) Each Party shall permit the international maritime transport service suppliers of the other party to re-position equipment such as empty containers, not being carried as cargo against payment, between ports of XX or between ports of a Member State of the EU.
- (f) Each Party, subject to the authorisation of the competent authority where applicable, shall permit international maritime transport service suppliers of the other party to provide feeder services between their national ports.

SECTION 4
FINAL PROVISIONS AND EXCEPTIONS

[MSR: ARTICLE 45

INCREASING PARTICIPATION OF MERCOSUR MEMBER STATES

1. Subject to the provisions [on Cooperation], the Parties agree to cooperate, including by providing support for technical assistance, training and capacity building in, inter alia, the following areas:
 - (a) Improving the ability of service suppliers of MERCOSUR Member States to gather information on and to meet regulations and standards of the European Union Party at European Union, national and sub-national levels;
 - (b) Improving the export capacity of service suppliers of MERCOSUR Member States, with particular attention to the needs of small and medium-sized enterprises;
 - (c) Establishing mechanisms for promoting investment and joint ventures between service suppliers of the EU Party and MERCOSUR Member States.
2. EU Member States shall establish contact points within one year from the date of entry into force of the Agreement to facilitate the access of MERCOSUR Member States service suppliers to information, related to their respective markets, concerning:
 - (a) commercial and technical aspects of the supply of services;
 - (b) registration, recognition and obtaining of professional qualifications; and
 - (c) the availability of services technology.]

ARTICLE 46
REVIEW CLAUSE

Pursuant to its objectives, this Chapter may be revised no later than three (3) years from the date of entry into force of this Agreement, or in the context of an overall review of this Agreement.

ARTICLE 48
GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:
 - (a) necessary to protect public security or public morals or to maintain public order²⁴;

²⁴ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (b) necessary to protect human, animal or plant life or health;
 - (c) ~~necessary to the conservation of exhaustible natural resources [EU]~~ relating to the conservation of exhaustible natural resources, if such measures are applied in conjunction with restrictions on domestic ~~[MRS: production or consumption]~~ ~~[EU]~~ investors or on the domestic supply or consumption of services;~~]~~
 - (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
 - (l) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) [MSR anti-money laundering and counter-terrorism financing [AML/CTF] regulations];
- Drafter's note: to be discussed in the institutional part of the agreement.**
- (iii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iv) safety;
 - (g) inconsistent with Article [...] on National Treatment, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party²⁵.

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Red

Formatted: Font color: Red

Formatted: Font color: Red

Formatted: Font color: Auto

Formatted: Font color: Blue

Formatted: Highlight

Formatted: Font color: Auto

~~2.2.~~

Formatted: Indent: First line: 0 cm

~~EU~~ Nothing in this Chapter shall be construed to prevent the adoption or enforcement of a measure which implements a requirement imposed or enforced by a court, administrative tribunal, or competition authority to remedy a violation of competition laws and regulations.

Formatted: Font color: Auto

²⁵ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

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

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

ARTICLE 49
SECURITY EXCEPTIONS

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) connected with the production of or trade in arms, munitions and war materials and related to traffic in other goods and materials and to economic activities carried out directly or indirectly for the purpose of supplying a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

ARTICLE 50
DENIAL OF BENEFITS

A Party may deny the benefits of this Agreement to:

- (a) the supply of a service, if it establishes that this service is supplied from or in the territory of a non-Party
- (b) a juridical person, if it establishes that it is a juridical person of a non-Party.

[To be tackled in the EU schedules]

[EU: COMPUTER SERVICES

ARTICLE 24: COMPUTER SERVICES

1. In liberalising trade in computer services in accordance with Sections 2, 3 and 4 of this Chapter, the Parties shall comply with the following paragraphs.
2. CPC²⁶ 84, the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services: computer programmes defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions.
3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:
 - (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems; or
 - (b) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs; or
 - (c) data processing, data storage, data hosting or database services; or
 - (d) maintenance and repair services for office machinery and equipment, including computers; or,
 - (e) training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.
4. Computer and related services enable the provision of other services (e.g., banking) by both electronic and other means. However, there is an important distinction between the enabling service (e.g., web-hosting or application hosting) and the content or core service that is being delivered electronically (e.g., banking). In such cases, the content or core service is not covered by CPC 84.]

END.

²⁶ CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 77, CPC prov. 1991.