

# **SUMMARY OF THE COMMISSION'S PROPOSAL FOR THE EU'S SERVICES OFFER**

## **INTRODUCTION**

This paper sets out a summary of the main features of the Commission's proposal for the EU's services offer in the GATS negotiations under the Doha Development Agenda (DDA).

This offer is conditional on the submission of substantive offers from WTO members in sectors where the EU has made requests. The EU, therefore, retains the right to withdraw any elements of it at any time during the negotiations.

It should also be recalled that the EU submitted its initial requests for improved market access in services to WTO Members in July 2002. A summary of EU's initial requests has been published on the DG Trade web site. In return the EU has since July 2002 received 27 initial requests from third countries.

On 12 November 2002 the Commission launched an unprecedented public consultation on the requests addressed by WTO members to the EU by publishing a comprehensive consultative document in all official languages outlining the main issues raised in the requests. The deadline for comments was originally set to 10 January 2003 but has since been extended until 31 January 2003. The Commission services have analysed the comments submitted and have considered these as they prepared the proposal for the EU offer.

The offer is conditional on other WTO Members making substantive offers in sectors where the EU has made requests

## **SECTORAL COMMITMENTS**

---

### **I. SECTORS WHERE THE COMMISSION PROPOSES THAT THE EU MAKES NO OFFER**

#### **HEALTH RELATED AND SOCIAL SERVICES SECTOR**

The Commission does not propose commitments in health related and social services. Thus Member States fully preserve the right to decide the most appropriate organisation of their health system.

#### **AUDIOVISUAL SERVICES**

The Commission proposal does not introduce changes to the present regime: no commitment in this sector, and maintenance of all MFN (Most Favoured Nation) exemptions listed by the EC during the Uruguay Round to cover cultural policies such as co-production agreements and privileged treatment accorded to audio-visual works originating from EU and other European countries.

#### **EDUCATION SECTOR**

The Commission does not propose commitments in education and Member States fully retain the right to decide the most appropriate organisation of their education system.

### **II. SECTORS WHERE THE COMMISSION PROPOSES THAT THE EU MAKES AN OFFER**

#### **PROFESSIONAL SERVICES**

The Commission is proposing improved market access for non-EU nationals in sub-sectors of interest to many partners, notably developing countries.

The sectoral coverage of **legal services'** commitments has been broadened so that foreign lawyers and law firms can establish in any Member State and provide legal services in respect of the law of any country in which those lawyers are qualified. The practice of EC law and of the national law of Member States is subject to admission to a Bar in the EC.

Subject to the fulfilment of the necessary qualifications required by EU law it is also proposed that foreign **accountants** be allowed to review and compile financial statements and other accounting information for EU clients and that foreign **architects and engineers** be able to provide plans, designs, projects, specifications or cost estimates to their clients in the EU, without being discriminated against on the basis of their nationality.

### **COMPUTER AND RELATED SERVICES**

In computer services, a sector that is key to the development of the Information Society in Europe, the Commission proposes to offer full market access to foreign service providers, including to high-skilled self-employed computer experts. This should enable Europe to benefit from the best computer services at the lowest cost, with a view to reach the goal set in the "Lisbon strategy".

### **BUSINESS SERVICES**

The proposal improves the EU's commitments by removing Member States specific limitations on packaging services, and printing and publishing on a fee or contract basis. Furthermore, some nationality, residence and commercial presence conditions are also removed in some sub-sectors.

### **POSTAL AND COURIER SERVICES**

On postal and courier services, the proposal confirms foreign operators access to markets which have already been opened to competition by the first postal directive of 1997 (EC 97/67) - notably parcels, express delivery, letters above 350 grams.

The universal service provisions existing within the EC are fully safeguarded.

### **TELECOMMUNICATIONS SERVICES**

In telecommunications services, the Commission proposes to guarantee to third countries' operators full access to the EU's internal market, while fully safeguarding the EU's right, for example, to define its universal service objectives for those services.

It will also remove restrictions, such as prohibitions for telecom companies to engage in non-telecom activities (e.g. computer related services) or prohibitions against providing telecom services across borders (not only within the country).

## **CONSTRUCTION AND RELATED ENGINEERING SERVICES**

The Commission proposes to eliminate some national limitations to market access and national treatment. This responds to requests made not only by industrialised countries but also by DCs, and removes obstacles for foreign companies to set up and develop their business in the EU.

## **DISTRIBUTION SECTOR**

The proposal confers on non-EU nationals the same treatment as granted to EU nationals when applying for the opening of new department stores. Thus, the granting of licences for new department stores will be done on the merits of each application including its compliance with non-discriminatory national regulations such as land-use planning laws etc. , regardless of the nationality of the companies. In addition, it is proposed to allow commission agents to provide services cross-border in some Member States and to liberalise franchising.

## **ENVIRONMENTAL SERVICES SECTOR**

Environmental services are of growing importance in all countries, and there is a strong potential for the liberalisation of this sector to result in a 'win-win' scenario through better environmental protection, diffusion of modern technology and know-how.

In the proposal, access to foreign providers of waste water, sanitation and similar services, who wish to establish in the European Union, is allowed (most Member States already committed these services during the Uruguay Round). The EU also proposes market access and national treatment for providers of noise and vibration abatement services. The offer also foresees that advisory services for the protection of biodiversity and landscape could be offered by foreign companies to EU clients on a 'cross-border' basis, that is, without the foreign company having to establish a presence in the EU. Foreign companies who have a contract to provide environmental services with a client in the EU will be able to send skilled personnel to the EU to provide these services for up to six months at a time. This is particularly relevant in the area of consulting, environmental impact assessments, and similar service activities.

## **FINANCIAL SERVICES SECTOR**

On financial services, the Commission's proposal complements the already substantial access enjoyed by foreign financial institutions to the EU market. As a result, they can set up and develop their business in the EU without any discrimination, in all sectors (insurance, banking, investment services), subject to usual prudential requirements. For example, it offers the possibility for foreign financial institutions to provide, through a subsidiary or a branch, all banking and insurance services. Moreover, they can set up investment funds that benefit fully

from the harmonisation achieved within the single market. Also, it guarantees their ability to provide directly from their home countries truly international services, such as reinsurance. In technical terms, it is proposed to do away with a number of limitations pertaining for instance to the legal form of establishment or to the scope of business.

### **TOURISM AND TRAVEL RELATED SERVICES SECTOR**

The proposal would grant non-EU nationals wishing to establish travel agencies in the territory of the European Union the same treatment as EU nationals. The nationality of the companies or their managers will not be considered for the authorisation of new travel agencies.

### **NEWS AGENCIES AND ENTERTAINMENT SERVICES**

With respect to **news agencies** the proposal improves commitments by lifting some of the limitations (e.g. foreign ownership limitations and nationality requirement) in place in some Member States.

In “**Entertainment services**”, it is proposed that one Member State broadens its commitments in line with the rest of the EU.

### **TRANSPORT SERVICES SECTOR**

The main improvements in the proposed offer are:

- ◆ **Maritime transport** – to re-introduce the 1996 EU offer withdrawn at the end of the post Uruguay Round maritime negotiations). In addition, the proposal guarantees access to “feeder of international cargo” and “movement of empty containers” in accordance with existing EU and national legislation.
- ◆ On **air transport**, the offer includes “groundhandling” and “ airport management”.

### **ENERGY SERVICES SECTOR**

No improvements are proposed at this stage, pending completion of the on-going work in the WTO to clarify the classification of energy services.

## **HORIZONTAL COMMITMENTS**

---

### **PUBLIC UTILITIES**

The proposal introduces no changes to the current EU limitations in favour of public utilities within the EU.

### **INVESTMENT**

Regarding the general regime for foreign investment in services, the Commission's proposal does not suggest changes to the current framework. As a result, the attractiveness and openness of the EU as an investment location is confirmed.

### **REAL ESTATE**

The EU's schedule contains a number of horizontal limitations and a MFN exemption relating to the purchase and/or rental of real estate. The limitations essentially relate to authorisation procedures that foreign nationals have to pursue prior to acquiring and/or renting real estate.

The proposed offer consist in removing three of these restrictions and converting a scheduled limitation for foreigners to acquire property into an authorisation procedure for the acquisition of property like that found in the other Member States with authorisation procedures in this area.

### **SUBSIDIES**

The ability for the EU to provide subsidies in services sectors is maintained. This allows the EC and its Member states to develop their regional and research policies and to preserve the sustainability of the public sector.

### **MOBILITY OF PERSONS (MODE 4)**

"Mode 4" is when people travel to the EU to provide services for a limited period of time. Developing countries have placed a particular emphasis on Mode 4 in their requests to the EU, but the EU also has important offensive interests to pursue in this area.

Under the Commission's proposal, several improvements to the EU's commitments are proposed.

- ◆ A service company with a graduate training programme will be able to transfer its "managers of the future" for up to one year to obtain work experience with an affiliated company in the EU.

- ◆ Overseas companies, who have a contract to provide certain services with a client in the EU, will be able to send skilled personnel to the EU to provide these services for up to six months at a time. The EU already has commitments in this area, but the proposal extends the number of sectors that are covered, as well as the permitted length of stay and length of the underlying contract.
- ◆ Self-employed skilled professionals working in certain sectors and based overseas will be able to enter the EU for up to six months at a time to provide services to EU clients.

In all these cases, EU and national working conditions, minimum wage requirements, and any collective wage agreements will continue to apply. EU Member States will continue to be able to refuse entry to persons that pose a security threat or are considered to be at risk of abusing the terms of their entry.

## GATS BASICS

Under the General Agreement on Trade in Services (GATS) WTO Members commitments are laid down in so-called country schedules, one for each Member. Each Member determine the list of activities for which they are prepared to offer market access and national treatment to foreign service providers (“bottom-up approach”). There is considerable scope to tailor national schedules so as to cater for domestic policy objectives and constraints. For example, the GATS does not prescribe the number, level or sectoral pattern of a country's commitments.

For any sector included in its services schedule, a Member is required to specify the commitments that it is prepared to undertake on market access and national treatment. A “**commitment**” is an undertaking from the Member concerned not to apply certain types of market access restrictions or to discriminate against foreign suppliers. Departures from market access and national treatment are not prohibited *per se*, but they must be listed in the schedule as “**limitations**”. Limitations applying to all scheduled sectors may be inscribed in a horizontal section, to avoid repetition.

**MFN Treatment:** Under Article II of the GATS, Members are required to extend immediately and unconditionally to services or services suppliers of all other Members “treatment no less favourable than that accorded to like services and services suppliers of any other country”.

While this amounts to a prohibition of preferential arrangements among groups of Members in individual sectors or of reciprocity provisions, which confine access benefits to trading partners granting similar treatment, derogations are possible in the form of so-called Article II-Exemptions. Members were allowed to seek such exemptions at the time the Agreement entered into force. New exemptions can only be granted to new Members at the time of accession or, in the case of current Members, by way of a waiver under Article IX:3 of the WTO Agreement, or as part of economic integration agreements (Article V GATS) . All exemptions are subject to review; they should in principle not last longer than 10 years.

**Market Access:** Market access is a negotiated commitment to guarantee as certain level of access in specified sectors. It may be made subject to various types of limitations that are enumerated in Article XVI:2. For example, limitations may be imposed on the number of services suppliers, service operations or employees in the sector; the value of transactions; the legal form of the service supplier; or the participation of foreign capital.

**National Treatment:** A commitment to national treatment implies that the Member concerned does not apply discriminatory measures benefiting domestic services or service suppliers. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of the Member's own service industry. Again, the extension of



national treatment in any particular sector may be made subject to conditions and qualifications.