

**ADDITIONAL PROTOCOL 6 ON TRADE IN SERVICES  
TO THE AGREEMENT ON AMENDMENT OF AND ACCESSION TO  
THE CENTRAL EUROPEAN FREE TRADE AGREEMENT**

**Preamble**

The Parties to the Agreement on Amendment of and Accession to the Central European Free Trade Agreement" (hereinafter called "the Parties")

Bearing in mind the Preamble, the objectives, as set out in Article 1, and Chapter VI (Articles 26 to 29) of the Central European Free Trade Agreement 2006 (CEFTA 2006) relating to trade in services, including electronic commerce, the Parties will gradually achieve a progressive liberalization of their services markets in accordance with Article V of the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO);

Recognising that the liberalization of both goods and services in the framework of CEFTA 2006 shall act as avenue for achieving the objectives of economic development and growth in the region by expanding intra-regional investment and production opportunities;

Desiring to create favourable conditions for the development and diversification of trade between the Parties and for the promotion of commercial and economic co-operation in services;

Considering that the services sector plays an increasing role in the economies and trade of the Parties, with great potential to enhance intra-regional trade in services in a mutually beneficial manner;

No provision of this Protocol may be interpreted as exempting the Parties from their respective rights and obligations under their international agreements, including their existing regional and bilateral trade agreements and the WTO Agreement;

Have agreed as follows:

**Article 1**  
***Definitions***

1. For the purposes of this Protocol:
  - (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) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (c) "measures by Parties affecting trade in services" includes measures in respect of:
  - (i) the purchase, payment or use of a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by those Parties to be offered to the public generally;
  - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;
- (d) "commercial presence" means any type of business or professional establishment, including through:
  - (i) the constitution, acquisition<sup>1</sup> or maintenance of a juridical person, or
  - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;
- (e) "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,
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (f) "service of another Party" means a service which is supplied:
  - (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

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<sup>1</sup> The term "acquisition" shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

- (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
- (g) "service supplier" means any natural or juridical person that supplies a service;<sup>2</sup>
- (h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;
- (i) "service consumer" means any person that receives or uses a service;
- (j) "person" means either a natural person or a juridical person;
- (k) "natural person" means a national of a Party according to its domestic legislation;
- (l) "natural person of another Party" means a natural person who resides in the territory of that other Party or any other Party, and who under the law of that other Party: (i) is a national of that other Party; or (ii) has the right of permanent residence in that other Party.
- (m) "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;
- (n) "juridical person of a Party" means:

a juridical person set up in accordance with the laws of a Party, and having its registered office, central administration, or principal place of business in the territory of that Party. Should the juridical person have only its registered office or central administration in the territory of a Party it shall not be considered as a juridical person of that Party, unless it engages in substantive business operations in that Party;

a juridical person is:

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<sup>2</sup> Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Protocol. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

- (i) "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
  - (ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
  - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (o) "subsidiary" of a juridical person of a Party means a juridical person which is effectively controlled by another juridical person of that Party;
- (p) "branch" of a juridical person of a Party means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, does not have to deal directly with such parent body but may transact business at the place of business constituting the extension;
- (q) "direct taxes" comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (r) "Schedule" means the Schedule referred to in Article 6 and contained in Annex III;
- (s) "specific commitment" means a specific commitment set out in the Schedule referred to in Article 6;
- (t) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;
- (u) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution; these activities do not include the pricing of air transport services nor the applicable conditions;

- (v) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (w) "air traffic rights" means the right for scheduled and non-scheduled air transport services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

## **Article 2**

### ***Scope and Coverage***

1. This Protocol applies to measures adopted or maintained by the Parties affecting trade in services. It applies to all services sectors, except as indicated in paragraph 4.

2. For the purposes of this Protocol, trade in services is defined as the supply of a service:

- (a) from the territory of one Party into the territory of any other Party;
- (b) in the territory of one Party to the service consumer of any other Party;
- (c) by a service supplier of one Party, through commercial presence in the territory of any other Party;
- (d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party.

3. For the purposes of this Protocol:

- (a) "measures by Parties" 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;

In fulfilling its obligations and commitments under the Protocol, 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;

- (b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

- (c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

4. In respect of air transport services, this Protocol shall not apply to measures affecting air traffic rights or measures affecting services directly related to the exercise of air traffic rights. This Protocol applies to aircraft repair and maintenance services, selling and marketing of air transport services and computer reservation system (CRS) services.

5. This Protocol shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

6. This Protocol shall not apply to any subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.

### **Article 3**

#### ***Most-Favoured-Nation Treatment***

1. Each Party shall accord immediately and unconditionally to services and service suppliers of any other Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-Party.

2. If a Party accords treatment to services and service suppliers under an existing or future international agreement with a non-Party, the Party concerned shall, upon request by another Party, enter into negotiations so as to incorporate into this Protocol treatment no less favourable than that accorded to services and service suppliers under the international agreement concerned.

3. Treatment accorded to services and service suppliers from the EU under a Stabilisation and Association Agreement with the EU, or under the Association Agreement between the Republic of Moldova and the EU, shall be exempted from the obligations provided for in paragraphs 1 and 2. Treatment accorded to services and service suppliers from the EU under the domestic legislation that a Party enacted for purposes of its accession to the EU shall be exempted from the obligations provided for in paragraphs 1 and 2.

4. This Article shall not be construed to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

### **Article 4**

#### ***Market Access***

1. With respect to market access through the modes of supply identified in Article 2 paragraph 2, each Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its part of the Schedule.

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 basis of its entire territory, unless otherwise specified in its part of the Schedule, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>3</sup>
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) 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.

3. No Party shall introduce in its territory any new restrictions on the supply of services, as defined by Article 2 paragraph 2, except as otherwise provided for in this Protocol.

## **Article 5** ***National Treatment***

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<sup>3</sup> Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

1. In the sectors inscribed in its part of the Schedule, and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its domestic like services and service suppliers.<sup>4</sup>

2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its domestic like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.

## **Article 6** ***Schedule of Specific Commitments***

1. Each Party shall set out in a consolidated Schedule the specific commitments it undertakes under this Protocol. With respect to sectors where such commitments are undertaken, the Schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) where appropriate, the time-frame for the implementation of such commitments; and

(d) where appropriate, the date of entry into force of such commitments.

2. The Parties' Schedule of specific commitments is set out in Annex III and shall form an integral part of this Protocol.

## **Article 7** ***Modification of Schedules***

The Parties shall, upon written request by a Party notified to the Subcommittee on Trade in Services, hold consultations to consider any request to modify a specific commitment of the requesting Party. The consultations shall be held within three months after the requesting Party notified its request to the Subcommittee on Trade in Services.

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<sup>4</sup> 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 services or service suppliers.



In the consultations, the Parties shall aim to maintain a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of specific commitments prior to such consultations. Any modification of specific commitments is subject to the procedures set out in Article 47 of the CEFTA 2006.

## **Article 8** ***Movement of Natural Persons***

1. The rights and obligations of the Parties in respect of the movement of natural persons supplying services in a Party shall be governed by Annex I to this Protocol. Natural persons covered by a specific commitment of a Party shall be allowed to supply the service in that Party in accordance with the terms of that commitment.
2. This Protocol shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. Nothing in this Protocol shall prevent the Parties from applying measures to regulate the entry of natural persons into, or their temporary stay in, their territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across their borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.

## **Article 9** ***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 the operation of this Protocol. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
3. Each Party shall establish a Contact Point for Services as provided for in Article 44 of CEFTA 2006.
4. Each Party shall promptly and at least annually inform the Subcommittee on Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Protocol.

5. Each Party shall, to the extent practicable, provide in advance information on any relevant measure of general application that the Party proposes to adopt in order to allow an opportunity for other Parties to comment on the measure. The information shall be provided to the other Parties through the Subcommittee on Trade in Services and the Contact Points for Services shall be the means for such communications.

6. Any Party may notify to the Subcommittee on Trade in Services any measure by any other Party, which it considers to affect the operation of this Protocol.

## **Article 10** ***Domestic Regulation***

1. Consistent with the provisions of this Protocol, the Parties retain the right to regulate, and to adopt new regulations, to meet legitimate policy objectives.

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

3. (a) each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

(b) the provisions of subparagraph (a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

5. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services, the Subcommittee on Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

- (b) not more burdensome than necessary to ensure the quality of the service;
  - (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.
6. (a) in sectors in which a Party has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 5, the Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its specific commitments in a manner which:
- (i) does not comply with the criteria outlined in subparagraphs 5(a), (b) or (c); and
  - (ii) could not reasonably have been expected of that Party at the time it made the specific commitments in those sectors.
- (b) in determining whether a Party is in conformity with the obligation under paragraph (a), account shall be taken of international standards of relevant international organizations<sup>5</sup> applied by that Party.
7. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.
8. The Parties will review issues of domestic regulation within two years of the entry into force of this Protocol. Upon the request of one or more Parties, the Parties will enter into negotiations on domestic regulation disciplines to be incorporated into this Protocol, as an Annex or otherwise.

## **Article 11** ***Recognition***

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to any requests by another Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or be accorded autonomously.

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<sup>5</sup> The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the World Trade Organization (WTO).

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a non-party, that Party shall afford adequate opportunity for the other Parties to negotiate their accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted in the territory of that other Party should also be recognised.

3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between the Parties in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. The Parties shall conclude the necessary processes to develop mutual recognition agreements or arrangements for the regulated professions after the entry into force of this Protocol.

## **Article 12** ***Monopolies and Exclusive Service Suppliers***

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 3 and its specific commitments.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The Subcommittee on Trade in Services may, at the request of a Party which has a reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with paragraph 1 or 2, request the Party establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

## **Article 13** ***Business Practices***

1. The Parties recognize that certain business practices of service suppliers, other than those falling under Article 12, may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of any other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Party addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information to the requesting Party, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

#### **Article 14** ***Payments and Transfers***

1. Except under the circumstances envisaged in Article 15, a Party shall not apply restrictions on international transfers and payments for current transactions with another Party relating to its specific commitments.

2. If a Party undertakes a market access commitment in relation to the supply of a service through a mode of supply referred to in Article 2 paragraph 2, and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market access commitment in relation to the supply of a service through a mode of supply referred to in Article 2 paragraph 2, it is thereby committed to allow related transfers of capital into its territory.

3. Nothing in this Protocol shall affect the rights and obligations of the Parties under the Articles of Agreement of the International Monetary Fund (hereinafter referred to as the "IMF"), including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Party shall not impose restrictions on capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 15 or at the request of the IMF.

#### **Article 15** ***Restrictions to Safeguard the Balance of Payments***

1. The Parties shall endeavour to avoid the imposition of restrictions on the supply of services to safeguard the balance of payments.

2. Any restriction to safeguard the balance of payments adopted or maintained by a Party under and in conformity with Article XII of the GATS shall be deemed to be compatible with this Protocol.

## **Article 16**

### ***General Exceptions***

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Protocol shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order;<sup>6</sup>
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Protocol including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety;
- (d) inconsistent with Article 5 provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>7</sup> imposition or collection of direct taxes in respect of services or service suppliers of other Parties;

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<sup>6</sup> 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.

<sup>7</sup> 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 service 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 service suppliers subject to tax on worldwide taxable items from other 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 within the meaning of paragraph (d) and this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party adopting the measure.

- (e) inconsistent with Article 3, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

**Article 17**  
***Security Exceptions***

1. Nothing in this Protocol 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) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning 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.
2. The Subcommittee on Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

**Article 18**  
***Cooperation on Electronic Commerce***

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under the provisions of this Protocol.
2. The Parties agree that the development of electronic commerce must be fully compatible with the highest international standards of data protection, in order to ensure the confidence of users of electronic commerce.

3. The Parties agree that deliveries by electronic means shall be considered as the supply of services, within the meaning of Article 2 paragraph 2(a), and shall not be subject to customs duties.

4. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will, *inter alia*, address the following issues:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
- (b) the liability of intermediary service providers with respect to the transmission, or storage of information;
- (c) the treatment of unsolicited electronic commercial communications;
- (d) the protection of consumers in the ambit of electronic commerce;
- (e) any other issue relevant for the development of electronic commerce.

5. Such cooperation can take the form of exchange of information on the respective domestic legislation of the Parties on these issues as well as on the implementation of such legislation.

### **Article 19** ***Denial of Benefits***

A Party may deny the benefits of this Protocol to a service supplier of another Party if it establishes that the service is being supplied in that Party by a juridical person which is owned or controlled by persons of a non-Party who have no substantive business operations in the territory of any Party.

### **Article 20** ***Review***

1. With the objective of further liberalising trade in services between them, in particular eliminating substantially all discrimination between and among them within a period of five years, the Parties shall regularly review their Schedule of specific commitments, taking into account in particular any autonomous liberalisation and on-going work under the auspices of the WTO. The first such review shall take place no later than three years after the entry into force of this Protocol.

2. The regular reviews of the level of liberalisation pursuant to paragraph 1 shall take into account the assessment of the degree of restrictiveness of measures affecting trade in services by using the methodologies established by the World Bank and the Organisation for Economic Co-operation and Development (OECD).

### **Article 21** **Subcommittee on Trade in Service**



The Subcommittee on Trade in Services established pursuant to Article 41 paragraph 5 of the CEFTA 2006 shall facilitate and supervise the implementation and application of this Protocol by the Parties.

## **Article 22**

According to Article 47 paragraph 1 of CEFTA 2006, this Protocol is an integral part of CEFTA 2006.

## **Article 23** ***Annexes***

The following Annexes form an integral part of this Protocol:

Annex I - Temporary Entry and Stay of Natural Persons for Business Purposes;

Annex II - Regulatory Principles Regarding Telecommunications;

Annex III - Consolidated Schedule of Specific Commitments on Trade in Services of CEFTA Parties.

## **Article 24** **Entry into force**

1. This Protocol is subject to ratification, acceptance or approval in accordance with the requirements foreseen by the domestic legislation of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.
2. This Protocol shall enter into force on the thirtieth day upon depositing of the third instrument of ratification, acceptance or approval.
3. For each Party depositing its instrument of ratification, acceptance or approval after the date of the deposit of the third instrument of ratification, acceptance or approval, this Protocol shall enter into force on the thirtieth day upon that Party depositing its instrument of ratification, acceptance or approval.
4. If its domestic legal requirements allow, a Party may apply this Protocol provisionally until that Party has deposited its instrument of ratification, acceptance or approval in accordance with paragraph 1. Any provisional application of this Protocol shall be notified to the Depositary.

IN WITNESS WHEREOF, the Plenipotentiaries of all CEFTA Parties, being duly authorized thereto, have adopted this Protocol.

Done in [ \_\_\_\_\_] on [ date ], in a single authentic copy in the English language, which shall be deposited with the Depository of the CEFTA 2006, which shall transmit certified copies to all CEFTA Parties".

## ANNEX I

### Temporary Entry and Stay of Natural Persons for Business Purposes

This Annex applies to measures by the Parties concerning the temporary entry and stay in their territories of key personnel, trainees, business services sellers, contractual services suppliers, independent professionals and short term visitors for business purposes.

#### Section I

#### Key Personnel, Trainees, Business Service Sellers, Contractual Service Suppliers, and Independent Professionals

1. In accordance with the objectives of this Protocol, the Parties undertake to allow the temporary entry and stay in their territories of the following categories of natural persons subject to the conditions listed below: (a) key personnel; (b) trainees; (c) business service sellers; (d) contractual service suppliers; and (e) independent professionals.
2. For every sector liberalised in accordance with Article 4 of this Protocol and subject to any reservations listed in Annex III the Parties shall allow the temporary entry and stay of the following categories of natural persons.
3. **“Key personnel”** means natural persons employed within a juridical person of a Party, other than a non-profit organisation, who are responsible for the setting up or the proper control, administration and operation of an establishment.

Key personnel comprises business visitors responsible for setting up an establishment and intra-corporate transferees. The temporary entry and stay of key personnel shall be allowed for a period of six months in any 12-month period for business visitors; and three years, in the first instance, for intra-corporate transferees. Temporary entry and stay for intra-corporate transferees shall be extended for up to two additional years for a total period not exceeding five years.

(a) *“Business visitors”* (BV) means natural persons working in a senior position within a juridical person who are responsible for setting up an establishment. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party; and

(b) *“Intra-corporate transferees”* (ICT) 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 an establishment (including subsidiaries, affiliates or branches) in the territory of another Party. The natural persons concerned shall belong to one of the following categories:

- (i) *Managers* are natural persons working in a senior position within a juridical person, receiving general supervision or direction of the business, who primarily direct the management of the establishment, including:
  - (a) directing the establishment, or a department or subdivision thereof;
  - (b) supervising and controlling the work of other supervisory, professional or managerial employees; and
  - (c) having the authority to personally recruit and dismiss or recommend recruiting, dismissing or other personnel actions.
- (ii) *Specialists* are natural persons working within a juridical person who possess specialized knowledge essential to the establishment's production, research equipment, techniques or management. 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 referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

4. **“Trainees”** means natural persons who have been employed by a juridical person of a Party for at least one year, who possess a university degree and who are temporarily transferred to an establishment in the territory of another Party, for career development purposes or to obtain training in business techniques or methods. 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 corresponding to the level of a university degree.

The temporary entry and stay for trainees shall be allowed for up to one year.

5. **“Business service sellers”** (BSS) means natural persons who are representatives of a service supplier of a Party seeking temporary entry into the territory of another Party for the purpose of negotiating the sale of services or goods or entering into agreements to sell services for that service 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.

The temporary entry and stay of business service sellers shall be allowed for up to six months in any 12-month period.

6. **“Contractual service suppliers”** (CSS) means natural persons employed by a juridical person of a Party which has no establishment in the territory of another Party and which has concluded a *bona fide* contract to supply services with a consumer in that other Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services. The service contract hereby referred to shall comply with the laws, regulations and requirements of the Party where the contract is executed.

Contractual services suppliers that are allowed temporary entry and stay in a Party to supply services in that Party shall be subject to the conditions specified below:

- (a) The natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract in another Party.
- (b) The natural persons should have at least two years experience in the particular sector of activity that is the subject of the service contract.
- (c) The natural persons must possess professional qualifications if this is required to exercise an activity pursuant to the laws, regulations or requirements of the Party where the service is supplied.
- (d) The natural persons shall not receive remuneration for the supply of services other than the remuneration paid by their employers during their stay in another Party.
- (e) The temporary entry and stay of natural persons within another Party shall be for a period of not more than six months in any twelve-month period or for the duration of the service contract, whichever is less.
- (f) The number of persons covered by the service contract shall not be greater than necessary to fulfil the contract, in accordance with the laws, regulations and requirements of the Party where the service is supplied.

7. “**Independent professionals**” (IP) means natural persons engaged in the supply of a service and registered as self-employed in the territory of a Party, who have concluded a *bona fide* contract to supply services with a consumer in another Party, requiring their presence on a temporary basis in that other Party in order to fulfil the contract to provide services.

Independent professionals that are allowed temporary entry and stay in a Party to supply services in that Party shall be subject to the conditions specified below:

- (a) The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons registered in another Party and must have obtained a service contract for a period not exceeding twelve months.
- (b) The natural persons must possess, at the date of submission of an application for entry into a Party, at least three years professional experience in the sector of activity which is the subject of the service contract.

- (c) The natural persons must possess professional qualifications if this is required to exercise an activity pursuant to the laws, regulations or requirements of the Party where the service is supplied.
- (d) The temporary entry and stay of natural persons in a Party shall be for a period of not more than six months in any twelve-month period or for the duration of the service contract, whichever is less.

8. A Party shall not maintain or adopt any limitations on the total number of natural persons that a juridical person of another Party may transfer as key personnel or trainees in a specific sector in the form of numerical quotas, or a requirement of an economic needs test or labour market test or any discriminatory limitations. A Party shall not require that an establishment appoint to senior management positions natural persons of any particular nationality.

## **Section II**

### **Short term visitors for business purposes**

1. The Parties shall facilitate, in conformity with their respective legislation, the temporary entry and stay in their territories of short-term visitors for business purposes from any other Party with a view to carrying out the following activities:

- (a) Research and Design: Technical, scientific and statistical researchers on behalf of a juridical person established in the territory of another Party;
- (b) Marketing research: Personnel conducting research or analysis, including market research, on behalf of a juridical person established in the territory of another Party;
- (c) Training seminars: Personnel of a juridical person in a Party who enter the territory of another Party to receive training in techniques and work practices employed by juridical persons or organisations in that other Party, provided that the training received is confined to observation, familiarisation and classroom instruction only;
- (d) Trade Fairs and Exhibitions: Personnel attending a trade fair for the purpose of promoting their juridical person or its products or services in another Party;
- (e) Sales: Sales representatives and agents taking orders or negotiating contracts for goods for a juridical person located in the territory of another Party, but not delivering goods;
- (f) Purchasing: Buyers purchasing for a juridical person or management and supervisory personnel engaging in a commercial transaction carried out in the territory of another Party.

(g) Meetings and consultations: Natural persons attending meetings or conferences or engaged in consultations with business associates.

2. Persons engaging in the activities listed in paragraph 1 may be granted temporary entry and stay in a Party as short term visitors for business purposes, provided that they: (i) are not engaged in selling their goods or services to the general public or in supplying their goods or services themselves; (ii) do not on their own behalf receive any remuneration from a source located within the Party where they are staying temporarily; and (iii) are not engaged in the supply of a service in the framework of a contract concluded between a juridical person who has no commercial presence in the Party where the short-term visitors for business purposes are staying temporarily and a consumer in that Party.

3. The temporary entry and stay of short term visitors for business purposes in the territories of the Parties, when allowed, shall be for a period of up to six months in any twelve-month period.

## ANNEX II

### Regulatory Principles Regarding Telecommunications

The following are definitions and principles on the regulatory framework for telecommunications networks and services.

#### Definitions

"Telecommunications" means the transmission and reception of signals by any electromagnetic means.

"Public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

"Public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

"User" means service consumer and service supplier.

"Essential facilities" means facilities of a public telecommunications transport network or service that:

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A "major supplier" means a supplier, which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for telecommunications networks and services as a result of: (a) control over essential facilities; or (b) use of its position in the market.

#### **1. Competitive safeguards**

##### Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained or adopted for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or



continuing anti-competitive practices. These anti-competitive practices shall include in particular:

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

## **2. Interconnection**

2.1 Interconnection refers to linking with suppliers providing public 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, where specific commitments are undertaken.

### **2.2 Interconnection to be ensured**

Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided<sup>8</sup> :

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;<sup>9</sup>
- (b) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

### **2.3 Public availability of the procedures for interconnection negotiations**

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<sup>8</sup> Suppliers of services or networks not generally available to the public, such as closed user groups, have guaranteed rights to connect with the public telecommunications transport network or services on terms, conditions and rates which are non-discriminatory, transparent and cost oriented. Such terms, conditions and rates may, however, vary from the terms, conditions and rates applicable to interconnection between public telecommunication networks and services.

<sup>9</sup> Different terms, conditions and rates may be set for operators in different market segments, on the basis of non-discriminatory and transparent licensing provisions, where such differences can be objectively justified because these services are not considered "like services".

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

#### 2.4 Transparency of interconnection arrangements

Each Party shall ensure that a major supplier makes publicly available either its interconnection agreements or a reference interconnection offer.

#### 2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier shall have recourse, either:

- (a) at any time; or
- (b) 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 paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

### 3. Universal service

Any Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations shall not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

### 4. Public availability of licensing criteria

Where a licence is required, the following shall be made publicly available:

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
- (b) the terms and conditions of individual licences.

The reasons for the denial of a licence shall be made known to the applicant upon request.

### 5. Independent regulators

The regulatory body in each Party shall be separate from, and not accountable to, any supplier of telecommunications networks and services. The decisions of, and the procedures used by regulators shall be impartial with respect to all market participants.

### 6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, timely, transparent and non-discriminatory manner. 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.

**ANNEX III**

**Consolidated Schedule of Specific Commitments on Trade in  
Services of CEFTA Parties**