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# **Further support to the development of trade in Kosovo**

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**Assessment of Kosovo's Obligations Emanating from Additional Protocol 6 on Trade in Services**

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**Kosovo**

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**SNKE Mission Report**  
Act nr 1.3.2 - Assessment of Kosovo's Obligations Emanating from the Entry into Force of  
the "Additional Protocol 6 on Trade in Services to the Agreement on Amendment of and  
Accession to the Central European Free Trade Agreement"  
***First Draft Document for Discussion***

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## I. Introduction

After a protracted negotiating process on a regional framework for the liberalization of trade in services, CEFTA Members finally agreed, during a meeting in Tirana on the 18<sup>th</sup> of March 2019, on the final text of the “*Additional Protocol 6 on Trade in Services to the Agreement on Amendment of and Accession to the Central European Free Trade Agreement*” (AP 6), and on the specific commitments to be adopted by each country aiming at binding liberalization of trade in services among them. The final text and the Annexes to AP 6 have yet to be formally adopted by the CEFTA competent decision-making instances. The Government of Kosovo adopted the decision authorizing the signature of AP 6 on the 14<sup>th</sup> of May 2019.

This document aims at providing an overview of the commitments adopted by Kosovo in the framework of AP 6, offering an analysis of the broader issues and of the implications at stake with regard to the binding obligations that Kosovo has adopted regarding trade in services. It also attempts to identify what legal and regulatory work would be needed, if any, in order to fulfil the adopted legally binding obligations. Furthermore, this document also aims at serving as a guide to AP 6 for those that are not familiar with the negotiating process that took place and the resulting final output.

The binding obligations adopted by CEFTA Members under AP 6 with respect to “measures adopted or maintained by the Parties affecting trade in services” comprise three broad groups: First, general obligations, which apply directly and automatically to all Members and all services sectors; secondly, general obligations that apply only to those services in which specific commitments have been registered in the member’s schedule; and finally the specific commitments concerning market access and national treatment inscribed in designated sectors. These specific commitments are set out in the “*Consolidated Schedule of Specific Commitments on Trade in Services of CEFTA Parties*” (Annex 3 of AP6)<sup>1</sup>. Even though the specific commitments undertaken by each CEFTA country vary to a certain extent, a significant degree of commonality can be observed regarding the scope and depth of the specific commitments adopted by all members.

AP 6 was modelled after the WTO “*General Agreement on Trade in Services*” (GATS) incorporating many of its general provisions, as well as the scheduling approach of “positive listing” for adoption of specific commitments. However, some important modifications were introduced, and some of the provisions present in the GATS are absent from AP 6. Given the similarity of the main provisions and of the approach for scheduling of specific commitments, which define the overall liberalization model, GATS practice and jurisprudence is quite appropriate to assess the broader issues, as well as the scope and depth of the commitments adopted under AP 6. In this regard we should stress the fact that the adoption of the GATS model has also transposed to AP 6 the many of the issues that remain unsettled and subject to different interpretations regarding the different GATS provisions.

This document, in Section II briefly discusses the basic concepts incorporated in AP 6 as derived from the GATS, then in Section III it proceeds to discuss the main general obligations emanating for AP 6 and the potential implications for Kosovo of its coming into effect. Section IV discusses the general obligations that only apply to sectors in which specific commitments have been adopted. Section V presents an assessment of the specific commitments adopted by Kosovo in Annex 3 to AP 6. Finally, Section VI presents some concluding remarks and recommendations.

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<sup>1</sup> Final version 2<sup>nd</sup> April 2019.

## II. Basic Concepts

AP 6 has incorporated the definitions, the main concepts and the overall structure of the GATS. In order to follow the discussion presented in this document is important to briefly recapitulate in some important concepts, which attain at the structure itself and the functioning of AP 6. From the start it should be noted that AP 6 is wide in scope and in depth. It covers all services, except those provided in the exercise of governmental authority and some air transport services, and covers all measures whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form affecting trade in services enacted by any level of government and by entities with delegated power to act upon.<sup>2</sup> As interpreted in the Bananas Case, the scope of the GATS encompasses any measure of a Member to the extent that it affects the supply of a service, regardless of whether such measure directly governs the supply of a service or whether it regulates other matters but nevertheless affects trade in services. Therefore, the GATS is far reaching and almost any type of state intervention, to the extent it affects trade in services, falls under it. We should understand that the scope of the concept is similar in AP 6.

### 2.1 Trade in services

Article 2.2, for the purposes of the Protocol, following the GATS practice, defines trade in services as the supply of a service:

- (a) from the territory of one Party into the territory of any other Party (Mode 1);
- (b) in the territory of one Party to the service consumer of any other Party (Mode 2);
- (c) by a service supplier of one Party, through commercial presence in the territory of any other Party (Mode 3);
- (d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party (Mode 4).<sup>3</sup>

### 2.2 Market Access

Market access limitations, as defined in Article 4 of AP 6, which directly transposed the list from GATS Article XVI can be discriminatory or non-discriminatory. Four of the six types of measures listed in Article 4.2 are quantitative in nature, concerning limitations on: (a) the total number of service suppliers; (b) the total value of service transactions or assets; (c) the total number of service operations or total quantity of service output; and (d) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ. Relevant measures may consist not only of numerical quotas or, in the case of 4.2(a), of monopolies and exclusivity arrangements, but include the requirement of an economic needs test. It should be noted that minimum thresholds, such as minimum size or minimum capital requirements, are not covered. In addition, Article 4.2 (e) captures measures which restrict or require specific types of legal entity or joint venture, while 4.2(f) relates to limitations on foreign-equity participation in terms of maximum percentage limits on foreign shares or the value of foreign investment.

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<sup>2</sup> 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 (Article 1.1c.)

<sup>3</sup> Technically, mode 4 is defined in Article 1.2(d) of GATS as being "the supply of a service... by a service supplier of one Member, through presence of natural persons of a Member in the territory of another Member". This definition applies to nationals as well as, in certain circumstances, permanent residents, of WTO Members seeking to supply services abroad (permanent residents are covered where the Member does not have nationals or accords substantially the same treatment to permanent residents and nationals) [Article XXVIII(k)]

Market access limitations consist of measures that a Member, having inscribed a specific sectoral commitment, must not adopt or maintain 'unless otherwise specified in its Schedule'. The jurisprudence under the GATS clearly confirm that the list of measures included in Article XVI constitute all the measures that should be considered as limitations to market access. That is, the range of possible restrictions to market access is only those listed in paragraph 2 of the Article XVI.<sup>4</sup> In the same vein, the GATS Scheduling Guidelines (S/L/92, para 8) explicitly confirm that the list of market access limitations in GATS Article XVI: 2 are exhaustive.<sup>5</sup> Therefore, this should also be the case in AP 6.

### **2.3 National Treatment**

National treatment, as provided by Article 5 of AP 6, means that foreign services and service suppliers are granted treatment no less favourable than that accorded to like national services and service suppliers. The beneficiaries of national treatment are both services and services suppliers. Services in the GATS is defined by Article I(3)(b), "services includes any service in any sector except services supplied in the exercise of government authority ". AP 6 in Article 2(3)(b) incorporate a similar definition of services. AP 6, as the GATS, defines services supplier in Article 1(g) as "any natural or juridical person that supplies a service". Branches and representative offices of services suppliers can also be accorded national treatment.

There is no obligation to provide identical treatment to foreign services and services suppliers. National treatment can result from formally identical or formally different treatment. The key test of national treatment is that the measure in question does not modify the conditions of competition in favour of domestic services and services suppliers and against foreigners. National treatment cover both de jure and de facto discrimination; that is, even if a measure applies to both foreigners and nationals it may still be discriminatory if its effect is to discriminate against foreign services or services suppliers. However, national treatment does not require a Member to compensate for any inherent competitive disadvantage which results from the foreign character of the relevant service or service suppliers.

### **2.4 Subsidies**

An area in which AP 6 departs from GATS provisions is with respect to subsidies. Article 2.6 provides that the Protocol "*shall not apply to any subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance*". Subsidies to the services industry are considered "measures" within the meaning of the GATS; therefore they are covered by the agreement, and therefore subject to its general obligations, such as MFN, and can be covered, if desired, by a Member's specific commitments on Market access and National Treatment. If a WTO Member wants to maintain the right to discriminate against foreign services and services provider in granting subsidies, in a service where it has made specific commitments it has to inscribe the limitation in its schedule.<sup>6</sup> In addition, GATS Article XV encourages Members to enter into negotiations with the aim of eliminating the potentially trade-distortive effects of subsidies. In the case of AP 6, subsidies are completely excluded from the agreement, therefore each member can provide whatever type of support it seems appropriate to its services providers. This exclusion can

<sup>4</sup> WTO Analytical Index. GATS-Article XVI (Jurisprudence). Available at: [www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gats\\_art16\\_jur.pdf](http://www.wto.org/english/res_e/publications_e/ai17_e/gats_art16_jur.pdf)

<sup>5</sup> Guidelines for the Scheduling of Specific Commitments under the General Agreement on Trade in Services (GATS). WTO S/L/92, 28 March 2001. Adopted by the Council for Trade in Services on March 23, 2001.

<sup>6</sup> Paragraph 10 of the Explanatory Note on Scheduling Commitments states that Members are not obliged to "take measures outside its territorial jurisdiction. It therefore follows that the National Treatment obligation in Article XVII does not require a Member to extend such treatment to a service supplier located in the territory of another Member" (WTO document MTN.GNS/W/164, p. 4). Consequently, the NT provision applies only to the delivery mode 3, when a foreign provider maintains a subsidiary in the host country.

turn to be problematic in the future, as state support for services suppliers can seriously impact the conditions of competition between countries in the CEFTA market.<sup>7</sup> Furthermore, as this type of measure is completely excluded from AP 6, there is no transparency obligation, which would allow members to be informed of the nature and extent of the support that would be provided to services suppliers in each of the CEFTA countries.

In the case of Kosovo, state aid is governed by Law No 05/L-100 of 2016 On State Aid, which prohibits any aid, except as provided by the law, and imposes strict limits and conditions for the approval of any state support for economic undertakings in the manufacturing and services sectors (Article 2). Therefore, whatever assistance Kosovo could provide to services suppliers would have to be compatible with the provisions of this law and subject to prior approval.<sup>8</sup> The potential trade-distorting effects of subsidies on CEFTA intra-regional services trade would be minimized to the extent that all member countries transpose and effectively implement the EU *acquis* in this area.

### III. General Obligations

AP 6, mirroring the GATS, has incorporates broad general obligations emanating from the GATS which will apply automatically upon its entry into effect to all members and all services covered by the agreement. However, some modifications have been introduced in the scope of some provisions, and an important general obligation absent in the GATS has been included. We will briefly discuss these obligations.

#### 3.1 Most-Favoured-Nation Treatment

The principle of non-discrimination is fundamental to the regulation of international trade. AP 6 general obligations include an immediate and unconditional commitment to most favoured nation (MFN) treatment to the services and service providers of other CEFTA Members (Article 3). This means that Kosovo shall accord to like services and services suppliers of other CEFTA countries treatment not less favourable than the best one it accords to any non-party. This amounts to a prohibition, in principle, of preferential arrangements among groups of Members in individual sectors or of reciprocity provisions which confine access benefits to trading partners granting similar treatment.

In connection to MFN, the Law on Services (Law No 05/L-130) might have certain important implications with respect to the right of establishment of services providers in Kosovo (mode 3 under AP 6). Article 6 of the said Law guarantees the right of establishment and access to, or the exercise of, services activities in Kosovo to foreign services suppliers of all countries. Therefore, even if Kosovo has made no specific commitments on establishment (Mode 3) in its schedule under AP 6, it has to permit the establishment and exercise of activity to services suppliers from all CEFTA countries in all the services sectors covered by the Law on Services. In the moment that Kosovo will transpose the right to provide services from the EU Services Directive it would be bound also to extend those rights to all services and services providers from CEFTA Members.

The economic integration exception to MFN included in the GATS by means of Article V, which allows for preferential treatment to parties of a free trade agreement on services, is not present in AP 6. In this area AP 6 introduces GATS *plus* provision, the obligation to enter into negotiations

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<sup>7</sup> Contrary to the case of the GATS, AP 6 does not incorporated a mandate to future negotiations on subsidies on trade in services, which would aim at avoiding the negative effects of such measures on trade in services.

<sup>8</sup> State aid may be considered compatible with the law "when granted to facilitate the development of certain areas or certain economic activities, whereby such aid does not significantly affect the trade terms as to contradict the common interest defined in agreements ratified by the Republic of Kosovo" (Article 6 (1.3)).

with CEFTA members in order to extend the most favourable treatment accorded to any third party. In the GATS the exception is permanent and there is no obligation to engage in negotiations. However, this is a soft provision as the obligation to enter negotiations does not preclude the outcome of such negotiations, and AP 6 is completely silent on what could be done in the case that negotiations finally are not fruitful.

Currently Kosovo has not negotiated any agreement covering specific commitments on trade in services therefore there is no immediate consequences emanating from this provision. However, if Kosovo negotiates a free trade agreement on services in the future with any country, it will have to, upon request by another CEFTA member, to enter into negotiations so as to incorporate into its commitments under AP 6 a treatment no less favourable than that accorded to services and service suppliers under the international agreement concerned (AP 6 Article 3.2). As noted in the Preamble to AP 6, the agreement is made “in accordance with Article V of the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO)”, therefore the commitments made under it does not have to be extended to other countries, even by CEFTA members who are WTO Members. It should be noticed that AP 6 did not incorporated the grandfather clause contained in GATS Article II.2.<sup>9</sup>

The MFN obligation will also apply to the specific commitments adopted in the framework of the GATS by CEFTA Members who are WTO Members, as Article 3.2 refers to commitments adopted “under an existing or future international agreement with a non-Party”, which certainly covers the commitments adopted by CEFTA countries WTO Members under the GATS. If any commitment in the GATS, covers sectors not included in AP 6, and/or provides favourable treatment above what is consigned in AP 6, Kosovo would have the right to request entering into negotiations with the concerned CEFTA party to be granted the most favourable treatment; which would have to be included in the respective CEFTA member in its schedule..

An exercise that would be appropriate in this respect would be to compare specific commitments of CEFTA WTO members under the GATS with those under AP 6, and also the initial offers presented by CEFTA WTO Members on the current negotiations in the framework of the Doha Development Agenda, as well as the services offers tabled by Bosnia & Herzegovina and Serbia in the context of their current negotiations to accede to the WTO.<sup>10</sup> It can be expected, on the basis of the experiences of other recently acceding countries to the WTO, that B&H and Serbia will be demanded to undertake extensive commitments on trade in services, which might go beyond their commitments under AP 6. As provided by AP 6 Kosovo would have the right to request to enter into negotiations for the extension of those commitments.

The only exception to MFN incorporated in AP 6 is treatment accorded to EU services suppliers under SAA's or under the Moldova agreement with the EU (Article 3.3). A careful assessment of the provisions in the current SAA's that might impact on trade in services is necessary in order to provide a comprehensive evaluation of the real implications of this exception to MFN. However, at first sight this will imply that EU services and services suppliers could receive in principle a more

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<sup>9</sup> Under the GATS Member countries could, however, deviate from this standard if the Member listed such measures in the "Annex on Article II Exemptions" and the conditions for such exemptions were met. This flexibility was considered necessary in order to maintain existing regulations or agreements not consistent with the MFN obligation and to preserve the prospective right to use reciprocal or unilateral liberalization measures. Almost all countries have claimed some MFN exemptions in the GATS in areas such as civil and maritime aviation, telecommunications and financial services. Similar exemptions have also been claimed with respect to national treatment.

<sup>10</sup> An assessment of the commitments adopted by CEFTA WTO Members under the GATS and the initial offers in the current negotiations can be found in: ECORYS (2010). "Potentials for the Liberalization of Trade in Services among CEFTA 2006 Parties: Identifying opportunities, gains and foundations for the negotiations". February. Available at CEFTA Secretariat web page.



favourable treatment that the one accorded to services and services suppliers of CEFTA Members. This also means that if in the future any CEFTA members negotiates trade in services under the agreement with the EU, the more favourable treatment provided to EU services and services suppliers would not be automatically extended to all CEFTA members.

An issue that needs clarification in relation to MFN is the reach of the last sentence of Article 3.3, “*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*”. What this exactly means? Should we understand that the transposition of EU *acquis* at any time is for the purpose of accession? In this case, if MFN treatment is not extended to CEFTA parties they will be adversely treated in comparison with non-parties. Upon accession to the EU, AP 6 will cease to have effect for that CEFTA member, therefore whatever legislation it enacts from that point in time would be absolutely inconsequential for the purposes of Article 3.

### **3.2 Standstill**

AP 6 has introduced a significant GATS *plus* obligation with important implications for future services trade policy and regulation; that of a comprehensive *stand still* commitment. Article 4.3 provides that “*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*”. Therefore, Kosovo will not be able to adopt after the entry into force of AP 6 any new measure of the type defined in Article 4.2 affecting any services sector at all, and any mode of delivery as provided by the definition of trade in services incorporated in the protocol.<sup>11</sup>

This is a significantly stringent commitment, as Kosovo will only be able to maintain the *status quo* in relation to the list of limitations to market access in every sector and mode of delivery. The future administration of the provision at the CEFTA level could turn out to be quite problematic. Contrary to the case of other agreements to liberalize trade in services that have incorporated a *stand still* obligation; AP 6 did not include an inventory of the existing market access limitations in all CEFTA members.<sup>12</sup> Therefore, there is no baseline information of the current market access limitations that are affecting different services sectors and different modes of supply in all CEFTA countries. Furthermore, the transparency obligations included in AP 6 Article 9 are quite limited with respect to services sectors in which no specific commitments have been undertaken by CEFTA Parties. The notification obligation (Article 9.4) only concerns those sectors in which a member has undertaken specific commitments. The monitoring of the implementation of Article 4.3 by all CEFTA Parties should be put high in the agenda of CEFTA Secretariat.

### **3.3 Transparency**

AP 6 Article 9, incorporates similar provisions on transparency that those present in the GATS Article III, as well as in the case of most agreements liberalizing trade in services. Transparency constitutes a significant general obligation that CEFTA Members should abide by with respect to trade in services, as all paragraphs except (Art. 9.4) apply regardless of specific commitments made by a member, i.e. unconditionally. Two main obligations derive from the transparency provisions in AP 6 covering all measures, sectors and modes of supply: (a) the obligation to publish, or otherwise make publicly available, all relevant regulations and measures of general application that affect trade in services. The publication of international agreements also comes

<sup>11</sup> This obligation is included under the Article on market access. Therefore it should be understood that only pertains to the list of measures incorporated in that article.

<sup>12</sup> See for example: Decision 439 of the Andean Community. “General Framework of Principles and Rules and for Liberalizing the Trade in Services in the Andean Community”; of June 11, 1998.

within the scope of this obligation; (b) the commitment to provide information in advance 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. This latter commitment requires to provide information on proposed regulation to CEFTA members through the Subcommittee on Trade in Services (STS).

*Ex ante* transparency, in the form of obligations providing for consultations with all interested parties prior to the enactment of a new law or regulation, will almost certainly have a higher administrative burden and cost. However, the implementation of these obligations in Kosovo would not imply any additional significant administrative effort or legislative amendments. All measures of general application are published (Laws, Administrative Instructions and other) and public consultations are already embedded in the normal legislative process. The 2016 regulation on the Minimum Standards for Public Consultation Process clarifies the standards, principles, and procedures for consultations during the drafting of legislation. Kosovo would have to establish the mechanism that would assure a prompt and effective provision of information about proposed amendments to existing regulations or any new regulation, and open venues for facilitating the participation of foreign interested stakeholders in open public consultations.

An obligation that derives from Article 9.3 is the establishment of Contact Point for Services (CPS) as provided by CEFTA (2006) Article 44.<sup>13</sup> Neither CEFTA Article 44, nor AP 6 Article 9.3 provides any guideline on the nature of such contact point, nor the time frame for its implementation. What is imposed is an “*access-to-information*” obligation, in that each Member is required to respond promptly to any request by another Member which relates to measures falling within the scope of AP 6. This obligation is somehow limited because CEFTA Article 44 allows only for government-to-government contact points. Other interested parties, such as individual service suppliers, would not have the right to use the CPS to directly request information about measures that affect trade in services.<sup>14</sup>

CEFTA members who are WTO Members have already established the “inquiry points” as mandated by GATS Article III. Requests of information by other Members through the enquiry points may relate to: (a) measures of general application affecting the operation of the GATS; (b) international agreements that a given Member participates in; or (c) measures that are subject to notification pursuant to GATS Art. III:3, that is on changes or new regulation on sectors included in the specific commitments of the members, which is equivalent to AP 6 Article 9.3 obligation. Whereas enquiry points are expected to provide information, they need not be depositories of domestic laws and regulations (GATS Art. III:4, sentence 5). The obligations emanating from AP 6 in this regard mirrors the transparency obligations of the GATS. In the case of the GATS a specific format for the required notifications was adopted. This guidelines could provide the basis for a similar development in the framework of AP 6.<sup>15</sup>

Kosovo would have to establish its CPS to fulfil the obligations on transparency. At the same time as provided by the Law on Services, it will have to establish in the future the Point of Single Contact (PSC). This two mechanisms are quite different in scope and in functioning. First, the CPS is a venue for information sharing between the governments of the CEFTA countries, without direct access for services operators. On the contrary the SPC is geared mainly to private sector services

<sup>13</sup> CEFTA Article 44 provides that “Each Party shall respond promptly to all requests by another Party for specific information on any of its measures of general application or international agreements that pertain to or affect this Agreement. Parties shall establish a contact point to which such requests shall be made. Contact points shall forthwith convey the request to the relevant domestic agencies.”

<sup>14</sup> In the GATS besides the enquiry points, developed country members have to establish “Contact Points” where services suppliers of developing countries can request directly information.

<sup>15</sup> WTO. Guidelines for Notifications Under the General Agreement on Trade in Services, S/L/5, 4 April 1995.

operators. The CPS is wider in scope than the PSC. The former covers all services sectors under AP 6, while the PSC only those sectors that fall within the Law on Services. There are significant sectoral exclusions on the Law on Services. Finally, the sole function of the CPS is to provide information upon request on issues covered by AP 6; while the PSC must additionally allow services operators to electronically access all processes that are required to enter the market. The PSCs are e-government portals providing information on administrative requirements and access to electronic procedures to complete the necessary formalities online.

Even though there are differences between the CPS and the SPC it would not make much sense to have different institutional arrangements to fulfil the different functions. In Kosovo the Ministry of Trade and Industry (MTI) will be responsible for the PSC, and should also be the CPS. Already some work has been started to progressively implement the CPS as the first step towards the establishment of a full fledged PSC in the country.<sup>16</sup> However, the establishment and the effective functioning of the PSC will demand significant efforts to be undertaken by a number of different public entities. The establishment of PSC in the EU has proven to be a complex endeavour.<sup>17</sup>

### **3.4 Recognition**

Article 11 of AP 6 incorporates some general obligations on recognition of the education or experience obtained, requirements met, or licences or certifications granted to a services supplier of another CEFTA country. The obligation on recognition stands independently if the country has made or not specific commitments regarding the concerned services sector.

As provided by the said Article, Kosovo will have to give “due consideration” to any requests by another CEFTA Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. This is a soft treaty clause, as the meaning of giving due consideration might be open to a variety of interpretations. There is no GATS jurisprudence that would allow examining the scope and implications of this general obligation regarding services suppliers which require a license or a permit to operate in the market.

Furthermore, Paragraph 3 incorporates an immediate and unconditional MFN treatment among CEFTA countries with respect to the application of its standards or criteria for the authorization, licensing or certification of services suppliers. This obligation eliminates any possibility of Kosovo providing different treatment based on CEFTA country or origin of the service or the nationality of the services supplier in the future. We have not identified any measure in effect that might directly discriminate between CEFTA’s services and services suppliers. However, discrimination can also arise by the manner in which the regulation is actually implemented, therefore this is an issue that should be closely monitored in the future.

A more concrete obligation stems from Article 11.2, by which Kosovo if by agreement or any other type of arrangement, or autonomously recognizes the education or experience obtained, requirements met, or licences or certifications granted, in the territory of any non CEFTA party, after the entry into force of AP 6 it will have to give adequate opportunity to any other CEFTA member to negotiate the accession to the agreement or arrangement, or in the case of autonomously recognition to demonstrate that its services suppliers meet the same requirements and therefore they should be recognized by the Kosovo’s relevant authorities.

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<sup>16</sup> The MTI has developed a road-map towards the establishment of the PSC, and has been involved in the enhancement of the MTI Services Database. Refer to MTI (2018) PSC Action Plan, December.

<sup>17</sup> Capgemini Consulting and Eurochambers (2015). “The Performance of the Points of Single Contact: An assessment against the PSC Charter”. EU Director-General for Internal Market, June.

It is interesting to note that AP 6 did not incorporate the transparency and notification requirements as per GATS Article VII(a)(b)(c).<sup>18</sup> This is an important omission as there will be no inventory of recognition agreements or arrangements, or measures of autonomous recognition, and no notification obligation of new developments in this area that would facilitate other CEFTA members to activate the provisions of Article 11.2. CEFTA countries WTO Members or observers would have access to the information through the WTO notification process. The burden will be on Kosovo to find the way to access the necessary information allowing to identify the agreements, arrangements or autonomous recognition in effect in other CEFTA Members.

In connection to Article 11.2, it would be necessary to undertake an examination whether Kosovo has any agreement or arrangement leading to recognition and if it autonomously recognized the services and services supplier of any country. The scope of such analysis was beyond the scope of this document, but should be done in order to have a clearer perspective of the potential future implications of the AP 6 obligations on recognition. However, it should be duly noticed that the obligation is only to give opportunity to the other party to negotiate a similar agreement or to access to autonomous recognition. There is nothing in AP 6 that presupposes the outcome of the negotiations or the request for autonomous recognition. To the best of our knowledge the similar provisions present in the GATS have yet not been activated by any WTO Member, and there has not been any dispute settlement process based on infringement of the corresponding GATS article VII.

### **3.5 Monopolies and Exclusive Service Suppliers**

AP 6 has introduced, through Article 12, provisions disciplining the behaviour of monopoly or exclusive services suppliers, which also cover the situations in which a CEFTA member 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. This provisions exactly transposes the GATS ones on these matters. Monopolies or exclusive services suppliers are not prohibited by AP 6. The obligation that emanates is basically that in these situations, to the extent that they might exists in Kosovo, the authority will have to ensure that the services providers fully respect the principle of MFN in its commercial undertakings.<sup>19</sup> There are currently no state sanctioned monopolies or exclusive suppliers on services in Kosovo. The situation in which in any sector only a number of services suppliers is authorized in Kosovo, needs further scrutiny in order to complement the analysis. This situation could emerge *de facto*, even if not *de jure*, when an economic need test (ENT) is required for the authorization of services suppliers.

Moreover, if Kosovo has made specific commitments in the sector, it will have to guarantee that the monopoly or exclusive supplier does not act in contravention to the specific commitments undertaken in respect to the concerned sector.<sup>20</sup> In this regard, for example, Kosovo has

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<sup>18</sup> According to GATS Article VII 4. Each Member shall: (a) within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1; (b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase; (c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

<sup>19</sup> The scope of the provision is limited to the supply of the monopoly service and therefore the monopolists' purchases, and whether they are for input or their own consumption, is not covered.

<sup>20</sup> This also covers the situation "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". (AP 6 Article 12.2)

committed full liberalization on Postal Services, and there are some issues regarding the conditions on which it provides some of those services. This is a matter that should receive immediate attention before AP 6 comes into force to avoid any involuntary infringement of the commitments adopted.

### **3.6 Competition**

AP 6 does not have disciplines on competition as such. Article 13, while recognizing that certain business practices of service suppliers may restrain competition and thereby restrict trade in services, only incorporates the obligation of CEFTA members to accept consultations at the request of other member to address any business practice that might be restraining competition and restricting trade in services. This provision contains only limited substantive obligations: a duty to consult, good faith in those consultations and providing information (including a confidentiality safeguard). The concrete mechanism to address these situations and its functioning would have to be established by CEFTA Members, and also for addressing the issue of what would be the consequences if the consultations do not provide a satisfactory solution to the parties. There are no competition rules in the CEFTA framework which could be applied in these cases; in the region competition is governed by national legislation.

Competition issues on trade in services is an issue of increasing concern worldwide, in particularly on the growing digital trade in services, and concerning some sectors, *inter alia*, maritime transport and tourism, and other in which significant business concentration is taking place at the regional and global levels. It would be interesting if at the CEFTA level some efforts are undertaken to assess the issue of competition in intra-CEFTA trade in services, and to examine the development of some regional disciplines to address the most compelling potential problems.

### **3.7 E-commerce**

Article 18.3 of AP 6 incorporates a general obligation concerning e-commerce. It provides that “*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*”. This is a GATS *plus* provision, as there is no similar obligation in it.

AP 6 has turned the temporary moratorium adopted in the WTO into a permanent obligation binding all CEFTA member countries. In 1998 the WTO Members adopted a Declaration on e-commerce, which included a two year moratorium on custom duties on electronic transmissions. Since then, with the exception of 2002-2003, the moratorium has been extended every two years. Another important issue to highlight regarding this obligation is that it has defined all deliveries by electronic means as a supply of a service, an issue that is still matter of debate in the framework of the multilateral trading system. The concept “delivery by electronic means” used in AP 6 is much wider than “trade in digitalized products” which would be much closer to cross-border trade in services through Mode 1. Cross-border trade in services via Information and Communication Technologies presents several challenges including enforcement, control and accountability. In the framework of the GATS it has not yet been possible up to date to eliminate the interpretative uncertainties of some of its provisions caused by the possibility to supply a diverse and growing number of traditional and new services remotely through electronic means. In this regard for example it is particularly difficult to distinguish between cross-border supply and consumption abroad in the case of e-commerce. The heated debates in the context of the WTO Work Programme on E-commerce (WPEC) seems to be partially fuelled by Members’ political unwillingness to accept that their WTO obligations apply to this new area of international services trade.

An issue that should be noted is that AP 6 does not incorporate a definition of “electronic commerce” to which the obligation should apply. In this respect, there is no internationally agreed

definition of e-commerce, and this is one of the areas that are being discussed in the context of the WTO work program, even after 20 years.<sup>21</sup> E-commerce, very broadly defined, could incorporate all value transactions involving the transfer of information, products, services or payments via electronic networks. This would include the use of electronic communication as the medium through which goods and services are designed, produced, advertised, catalogued, inventoried, purchased or delivered. In the WTO Work Programme on Electronic Commerce it was decided that: "*Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term 'electronic commerce' is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means*". Therefore, In the realm of trade, electronic commerce can be understood as comprising three different types of transaction, all of which require consideration: (a) the provision of Internet access services themselves – meaning the provision of access to the net for businesses and consumers; (b) the electronic delivery of services, meaning transactions in which services products are delivered to the customer in the form of digitized information flows; (c) the use of the Internet as a channel for distribution services, by which goods and services are purchased over the net but delivered to the consumer subsequently in non-electronic form.

In the WTO, and also in academic circles, debate continues on whether some products, which can be delivered both on a physical carrier and in purely electronic form (computer software, music, printed matter/e-books, films and video games, among others), should best be classified as services or goods. The classification of such transactions determine whether GATT or GATS applies, with potentially important implications for WTO Members' legal obligations. In the WTO system, the legal regime which governs a given transaction is determined by the nature of the product which is traded, not by the production process or the way of delivery. Therefore, if there would be agreement that some category of electronically delivered products should be classified and treated as goods, their importation would be subject to whatever tariff bindings and all other applicable GATT obligations.

At the WTO Ministerial Conference at Buenos Aires in December 2017, WTO Members reiterated their commitment to continue the work programme on e-commerce; while a significant number of Members of the WTO expressed a higher level of ambition and intent and issued a Joint Statement announcing the initiation of "exploratory work toward future WTO negotiations on trade-related aspects of e-commerce". In this area AP 6 has taken a step further incorporating a definition of the scope of e-commerce and adopting a permanent obligation; while in the WTO Members have not yet reach consensus on how to incorporate e-commerce issues into existing WTO agreements.

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<sup>21</sup> WTO (1998): Work Programme on Electronic Commerce of 30 September 1998. WTO Doc. WT/L/274, 1. Among the issues being discussed in the WTO Work Program on Electronic Commerce we have the following among others: the scope and definition of electronic transmissions; revenue implications of the moratorium; the technical feasibility of imposing customs duties; and the broader impact of the moratorium on trade and industrialization.

## IV. General Obligations on scheduled services

AP 6 introduces three main general obligations with respect to the sectors in which specific commitments, either on market access or national treatment, have been adopted by a members: on transparency, domestic regulation and on payments and transfers.

### 4.1 Transparency

Article 9.4 of AP 6 introduces, as is also the case in the GATS, a particular transparency obligation that applies to the specific commitments undertaken. Once the protocol comes into effect Kosovo will be obliged to inform, promptly and at least annually, to the CEFTA 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. This implies an *ex-post* notification of measures the have been adopted. The protocol is silent with regard to the specifics of the information that should be provided in these cases, but it will certainly entail a full notification of the adopted measures. This notification function should be performed by the Contact Point on Services (CPS); which as decided will be located at the Ministry of Trade and Industry (MTI). A mechanism that assures an adequate flow of information between different entities with attribution on different services activities needs to be promptly established and the necessary physical and human resources allocated.

### 4.2 Domestic regulation

AP 6 Article 10 directly transposed Article VI of the GATS, on domestic regulation, which has turn to be one of its most controversial provisions due to the potential impact on the regulatory autonomy of WTO members, and due to the unsettled relationship between commitments adopted on market access and national treatment by members and domestic regulation.<sup>22</sup> Article 10 of AP 6 adds further disciplines for domestic regulation, containing principally obligations of a procedural nature. There is no definition of “domestic regulations” incorporated under the provisions disciplining them; but it should be understood that it covers all measures as defined by AP 6 affecting services, other than those explicitly listed in Article 4, and those that discriminate against foreign services and services suppliers. Therefore, Article 10 is aimed at measures that do not discriminate (either *de jure* or *de facto*) against foreign services or foreign services suppliers, and hence are not captured by Article 5 of AP 6. Furthermore, such measures are of a qualitative nature, as they typically pursue legitimate policy objectives as for example ensuring the quality of the service supplied, and thus avoid falling under the six categories of limitations presented in Article 4 of AP 6 on restrictions to market access.

While Article 10 of AP 6 safeguards the right of CEFTA members to regulate and to adopt new regulation in pursuing legitimate policy objectives, it deals with the way domestic regulation is administered and establishes some required institutional procedures, incorporates disciplines for qualification, technical standards and licensing requirements, and includes a substantive obligation

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<sup>22</sup> Muller, Gilles (2017). “Troubled Relationship under GATS: Tensions between Market Access (Article XVI), National Treatment (Article XVII) and Domestic Regulation (Article VI)”. *World Trade Review*, Volume 6, Issue 3. July.

of transitional nature to endeavour to develop the core elements of future disciplines governing this area.<sup>23</sup>

The provision on Article 10.2 obliges CEFTA Members to ensure that all *measures of general application* affecting trade in services are administered in a reasonable, objective, and impartial manner.<sup>24</sup> It is important to highlight that it does not discipline the content of the measure but only the way in which it is administered. This obligation can be seen as an obligation of consistency and predictability on the administration of the measure, or one prohibiting discriminatory or arbitrary decisions by the responsible authority. In this context, objectiveness implies laws being applied fairly, consistently and predictably; regarding reasonability WTO jurisprudence notes that practices that are neither ‘in accordance with reason’, ‘having sound judgement’, ‘sensible’, ‘articulate’ or ‘within the limits of reason’ are considered unreasonable; and the condition of impartiality means that no special consideration or privileged treatment can be granted to one party and not the other.<sup>25</sup> This obligation attempts to ensure that foreign services providers do not face unnecessary barriers to trade by the inconsistent, biased or arbitrary application of domestic regulation by CEFTA Members that have made specific commitments. Therefore, a regulatory measure, even if pursuing a legitimate policy objective, may infringe AP 6 if its administration is inconsistent with the requirements of Article 10.2. This is an issue that should be carefully monitored to guarantee that all authorities administering services regulation in Kosovo abide by the binding obligations that the country has sovereignly adopted in an international agreement.

Article 10.3 further incorporates the obligation to maintain or institute an institutional mechanism, either judicial, arbitral or administrative tribunals or procedures, that must 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*”. The basic preferred condition is that the review should be undertaken by an entity independent of the agency entrusted with the administrative decision concerned. However, if that not the case, CEFTA members must anyway ensure that the established procedures in fact provide for an objective and impartial review. There is no obligation to establish tribunals or procedures that would be inconsistent with the constitutional structure of the CEFTA Member or the nature of its legal system; but the recourse to impartial review of administrative decisions and remedy if is the case should be guaranteed by all CEFTA members.<sup>26</sup> The access to impartial procedures for review of administrative decisions is an issue that requires a careful assessment in the case of the different entities with regulatory attributions in Kosovo. The assessment should encompass not only the legal aspects, but also the practical implementation of the review procedures that are in place.

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<sup>23</sup> There is no guidance on what should be understood as “legitimate policy objectives”. This is an issue that has figured prominently in the ongoing negotiations on domestic regulation under the GATS in the Working Group on Domestic Regulation (WGDR).

<sup>24</sup> The term “measures of general application” is not defined in the GATS and there are no cases of dispute settlement where this concept has been clarified. However, it has been noted that we can understand as measures of general application those not being limited in application to a specific individual case or economic operator. Laws, regulations, judicial decisions and administrative decisions of general application can be understood as the measures of general application which apply to a range of situations or an unidentified number of economic operators or cases, but not limited in their scope of application. The measures of general application can be extended to administrative rulings in individual cases where such rulings establish or revise principles or criteria applicable in future cases.

<sup>25</sup> Krajewski M, ‘Article VI GATS’ in Wolfrum R, Stoll P-T and Feinäugle C (eds), Max Planck Commentaries on World Trade Law: WTO - Trade in Services, vol 6 (Martinus Nijhoff 2008)

<sup>26</sup> AP 6 Article 10.3(b)



In those cases where authorization is required for the supply of a service the competent authorities of Kosovo must, within a reasonable period of time after the submission of a complete application, inform the applicant of the decision concerning the application. The competent authorities, at the request of the applicant, must provide information concerning the status of the application without undue delay (Article 10.4).

An important obligation in respect of sectors in which Kosovo has adopted specific commitments is the conditions that must be satisfied when adopting and implementing domestic regulation measures related to *qualification and licensing requirements and technical standards*. These categories include a vast range of domestic regulations. Qualification requirements include the essential requirements that a service supplier has to satisfy to be able to obtain certification or a licence, among other an examination, prove of experience, or language requirements. Qualification procedures are the administrative rules for administering the qualification requirements, such as the nature and number of the documents to be submitted or the fees to be paid. Licensing requirements include all substantive requirements that do not fall into the category of qualification requirements, which would allow a service supplier to obtain formal authorization to supply a service, such as requirement of registration or establishment, financial guarantees or membership in a professional body. Licensing procedures are administrative procedures dealing with the submission and processing of an application for a licence. Finally, technical standards include requirements which can be related to the characteristics of the service itself, as well as to the manner in which the service is performed.

Article 10.5 of AP 6 requires that domestic regulation dealing with licensing and qualification requirements and technical standards must: (a) be based on objective and transparent criteria, such as competence and the ability to supply the service; (b) be 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; and, (d) could not reasonably have been expected at the time Kosovo made the specific commitments in those sectors. Therefore, domestic regulation in these areas that nullify specific commitments made under Articles 4 and 5 by any CEFTA member by means of creating unnecessary barriers to trade and that could not reasonably have been expected at the time those specific commitments were made must be brought into compliance; otherwise the CEFTA member would be infringing its obligations under AP 6.<sup>27</sup>

It should be noted that the criteria in Article 10.5 are broad and subject to interpretation, in particular if a measure restricts trade more than necessary or if any particular measure could not have been expected at the time the commitments were made. Therefore the question of whether a given domestic regulation conforms to the established criteria may be extremely difficult to assess.

Domestic regulations which do not conform to the requirements of Article 10.5 must be brought into compliance; otherwise the Member concerned violates its obligations under the AP 6.<sup>28</sup> However, the

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<sup>27</sup> The scope and impact of Article 10.5 are even further limited by the fact that it only applies to claims of nullification or impairment. A mere violation of the obligations in Article 10.5 cannot be used as a basis for a claim, the claimant will have to show that a specific commitment is nullified or impaired through a national regulation that does not comply with the requirements of such Article.

<sup>28</sup>

criteria are so broad and so much subject to interpretation that, at least until the disciplines foreseen in paragraph 8 of Article 10 have been developed, the question of whether a given domestic regulation conforms to the obligations may be extremely difficult to answer.<sup>29</sup> In any case it would be appropriate for Kosovo's authorities to undertake a regulatory audit to assess the extent to which domestic regulation dealing with qualification and licensing requirements and technical standards in those services sectors in which has undertaken specific commitments might not be in compliance with the binding obligations Kosovo has adopted in this area under AP 6. Furthermore, in the case of Kosovo there are a substantial number of services that are not yet regulated. It would be advisable to take the criteria provided in Article 10.5 as guidance when designing and implementing any new regulation, as it reflects to some large extent international regulatory best practices.

Finally, Kosovo has adopted in the framework of AP 6 specific commitments in a significant number of professional services. As provided by Article 10.7, *"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"*. That is the procedures must be in place and operational. This is an area in which some immediate action will be necessary in order for Kosovo being in compliance with its obligations once the Protocol comes into effect. The procedures for The scope and impact of Article VI:5 GATS are even further limited by the fact that it only applies to claims of nullification or impairment. A mere violation of the obligations in Article VI:5 cannot be used as a basis for a claim, the claimant will have to show that a specific commitment is nullified or impaired through a national regulation that does not comply with the requirements of Article VI:4 GATS2016, "On the Regulated Professions in the Republic of Kosovo". The law is still non-operational. The State Examination Agency of Kosovo (SEAK) has not yet been established, and among other issues the law mandates the enactment of different sub-legal acts, which has not taken place.<sup>30</sup> This is not the place to undertake a comprehensive discussion of all the actions that would be needed for Kosovo to comply with its obligation. However, is important to highlight that this is an area that should receive priority attention in the immediate future

### **4.3 Payments and Transfers**

Article 14 of AP 6 governs payments and transfers relating to services covered by specific commitments, i.e. inscribed in a Member's schedule, whatever the mode of supply that is comprised. Paragraph 1 provides that *"a Party shall not apply restrictions on international transfers and payments for current transactions with another Party relating to its specific commitments"*. Therefore, no limitations to this obligation can be inscribed in Members' schedules, once the service transaction as such is covered. International transfers and payments comprise inward and outbound cross-border transactions between residents and non-residents of a member. According to Article XXX (d) of the International Monetary Fund Agreement, current transactions are any payment for a purpose other than transferring capital.

This provision plays a crucial role in securing the value of specific commitments undertaken by CEFTA members in the framework of AP 6; as the value of specific commitments on market

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<sup>29</sup> Article 10.8 provides that "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".

<sup>30</sup> For example Article 10.5(5,2) of Law No 05/L-066 provides that the treatment of professionals that have acquired the right to exercise a regulated profession outside Kosovo will be defined by a special sub-legal act, which has not been enacted.

access and national treatment could be seriously impaired if they could restrict international transfers and payment for service transactions in scheduled sectors. This obligation should apply, for example among other cases, when a foreign service supplier present in Kosovo - be it as commercial presence or as a natural person through Mode 4 - who wishes to have payments for services provided directly transferred abroad, for instance foreign workers wishing to have their wages directly transferred to their home country, or foreign branches wishing to have payments by clients directly made to the mother company abroad.<sup>31</sup> This obligation has to be seen more as a corollary of other GATS obligations. It does not add an extra obligation but rather limits ways in which governments may attempt reducing the impact of their specific commitments.

Regarding payments and transfers, currently there are no restrictions related to the use of the EURO in effect in Kosovo; other than reporting to Kosovo Customs the removal or importation of EURO 10,000 into. This obligation imposes however a limitation to restrictions on current payments that could be imposed in the future in affecting scheduled commitments.

Article 14, Paragraph 2, of AP 6 goes beyond current transfers and payments including also obligations related to capital transfers, who are of crucial importance in particular for the efficacy of commitments made on Mode 3, on establishment. It provides that, *“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”*. This obligation goes beyond GATS Article XI on payments and transfers, disciplining current payments and transfers related to specific commitments and restrictions to capital transfer inconsistent with them.<sup>32</sup> What is not clear in the formulation of Article 14.2 is if it covers also the obligation to allow expatriation of profits and capital as an essential part of the service itself, alternative that the second sentence of Article 14.2 would seem to preclude.<sup>33</sup> In any case in Kosovo, in connection with Mode 3, Article 9 of the Law No 04/L-220 on Foreign Investment, on currency conversion and guaranteed transfers, guarantees the right of foreign investors to freely undertake current transactions and the free repatriation of profits and capital.

Exchange control restrictions are not excluded from the scope of this Article, unless justified by the balance-of-payment exception (Article 15 of AP 6). According to paragraph 3 of Article 14, rights and obligations of the International Monetary Fund (IMF) members shall not be affected, as long as no restrictions on capital transactions covered by specific commitments are imposed. The IMF may, however, request that a Member impose such restrictions. Any restriction to safeguard the

<sup>31</sup> There is the question whether this obligation prohibits any restrictions on currency exports intended to pay for consumption abroad under Mode 2, such as maximum amounts of national currency which tourists are allowed to take with them, restrictions on the use of credit cards abroad etc.

<sup>32</sup> GAT Article XI.2 provides the following: “Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund”. This formulation indicates that any restriction to capital transfer either inbound or outbound which is inconsistency with specific commitments would infringe specific commitments.

<sup>33</sup> A footnote to Article XVI of the GATS on market access deals with certain capital movements relating to the supply of a service. Obligations under this footnote may not be made subject to limitations, but exist only where a specific commitment has been made. They apply only in two of the four modes of supply: (i) in the cross-border mode of supply (Mode 1), capital movements, whether into or out of the Member’s territory, must be allowed if they are an essential part of the service provided, such as payment of an insurance claim; (ii) in the commercial presence mode of supply (Mode 3), related capital inflows must be admitted<sup>10</sup>. It should be noted that restrictions on capital movements not mentioned in this footnote, for instance repatriation of liquidation proceeds on other capital outflows, may be covered where they “affect trade in services”, particularly foreign suppliers’ equal competitive opportunity.

balance of payments adopted or maintained by a CEFTA Party under and in conformity with Article XII of the GATS shall be deemed to be compatible with AP 6. The Protocol has not explicitly included the conditions that should be met when imposing measures to safeguard the Balance of Payment as provided by GATS **Article** XII.2.<sup>34</sup> However, it should be understood that the reference to the GATS Article XII should cover not only measures taken under Article XII, which means under the GATS, but also measures taken under Article 15 of AP 6. Nevertheless, this is an issue that would benefit from further clarification.

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<sup>34</sup> GATS Article XII.2. “The restrictions referred to in paragraph 1: (a) shall not discriminate among Members; (b) shall be consistent with the Articles of Agreement of the International Monetary Fund; (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member; (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and, (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.”

## V. Specific Commitments

The AP 6 schedules of commitments generally conform to a standard format, similar to the one used in the GATS negotiations, with commitments split into two parts: *Horizontal commitments* indicating the limitations that apply to all sectors included in the member's schedule; and then a list of *sector-specific commitments* by sector, which are identified generally by using the WTO Services Sectoral Classification List. In AP 6 the schedules were elaborated in a consistent manner with the GATS scheduling practice as provided by the Scheduling Guidelines.

The commitments adopted by Kosovo are presented in the Annex. Both for horizontal and sector-specific commitments, there are entries for "market access" and "national treatment" in two separate columns and the commitments are detailed across rows for the four modes of supply as defined in the Protocol; and inscriptions made for each of the four modes of supply: cross-border, consumption abroad, commercial presence, and presence of natural persons, and may take three forms: 'Unbound', 'None' and specified limitations, to indicate no commitment, full or partial commitments. A country's obligations in a specific sector can therefore only be determined by reading its sectoral limitations and any applicable horizontal limitations inscribed at the beginning of its schedule.

### 5.1 Horizontal Commitments

A horizontal commitment applies to trade in services in all scheduled services sectors unless otherwise specified. It in effect binds, either of a measure which constitutes a limitation on market access or national treatment or of a situation in which there are no such limitations. In AP 6 Kosovo, as other CEFTA Parties, have made limited horizontal commitments. This section briefly analyses those commitments.

Concerning Mode 3 Kosovo has bound the right of natural and juridical persons of other CEFTA countries to acquire rights in real state," unless otherwise provided by law (non-discriminatory restrictions)". This does not apply to agricultural land and forestry where limitations apply. This means that a person from any CEFTA country must have the right to acquire rights in real state, with the exception on agricultural and forestry land, in the same footing that Kosovo nationals. National treatment has been bound in this respect. Any measure that limits access to real state rights discriminating, *de jure* or *de facto*, against persons from CEFTA parties will be in contradiction with the commitment adopted by Kosovo if *none* has been inscribed on this mode of delivery in the sectoral commitments section of the schedule.

With respect to agricultural and forestry land the commitment does not specify what limitations apply, which is not in line with the GATS scheduling guidelines that clearly demanded that the schedules should indicate the remaining restrictions and describe in detail the measures otherwise inconsistent with market access or national treatment that the government reserves the right to apply. This has not been the case, and there is no clarity at all in the schedule on the limitations that affect access to agricultural and forestry land by foreigners.

A significant inscription as horizontal commitment adopted by all CEFTA pertains to "public utilities", which in practice could exclude a number of services sectors from the coverage of the agreement.<sup>35</sup> The sectors included go beyond what is commonly understood as public utilities as such, and also include some services activities which would qualify as "services supplied in the

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<sup>35</sup> "Services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators. These may exist in the following areas: energy services; water; public transport services and services auxiliary to all modes of transport; scientific and technical consulting services; research and development services on social sciences and humanities; technical testing and analysis services; environmental services; public health and public social services; communication services and public education services. Exclusive rights on such services may be granted to national or local private operators on a preferential basis".

exercise of governmental authority”, which are excluded per se from the definitional scope of the Agreement. In relation to the services covered by this horizontal limitation CEFTA members have reserve the right to keep or establish public monopolies or to grant exclusive rights to private operators, including the granting of exclusive rights to national or local private operators on a preferential basis.

While this horizontal limitation has been adopted as the same time in some of the sectors covered by it most CEFTA countries have adopted full liberalization commitments. This are the cases, for example of research and development services (CPC 851-853), technical testing and analysis services (CPC 8676); communication services (CPC 841); and environmental services (CPC 9401-9406). Therefore, while reserving the right to impose limitations in a number of sectors, most CEFTA countries have adopted full commitments on some of those sectors. The purpose of the horizontal limitation in these cases is not clear at all as the possibility of utilizing it has been precluded by the sectoral commitments. A further issue is that the horizontal limitations are nor related to a CPC corresponding number, so it will be complicated to assess the fulfilment of obligations if a CEFTA country decides to establish exclusive rights in the future.<sup>36</sup>

All CEFTA members have limit their commitments on Mode 4, that is movement of natural persons, to a set of categories of natural persons providing services, which are defined in the Annex 1 to the AP 6. These categories are: business visitors; intra-corporate transferees; trainees; business services sellers; contractual service suppliers; independent professionals; and short-term visitors for business purposes. Kosovo has made extensive sectoral commitments on Mode 4 inscribing in the columns on market access limitations and limitations to national treatment “none”. This means that there will be no restrictions and full national treatment will be provided to those foreigners qualifying under the agreed categories that entry Kosovo.

Work and employment of foreigners in Kosovo are governed by the Law No.04/L-219 of 2013, and Law No.06/L-036 on Amending and Supplementing the Law No.04/L-219, of 2018. The compatibility between the existing laws and the commitments adopted by Kosovo on Mode 4 needs to be reviewed to assess if there is any potential contradiction. In any case, the entry and access to work of those individuals covered by the sectoral commitments cannot longer be subjected to an economic need test as provided by the law on foreigners. The residence and work permits, if so required, will have to be outside any quota that could be established according to the legal framework.

## **5.2 Sectoral Commitments**

The sectoral commitments adopted by Kosovo are presented in the Annex to this document. AP6, as is the case of GATS, does not define what services are, but services need to be classified for the operation of the Agreement, as specific commitments on market access and national treatment are inscribed in the Member’s schedule on a sectoral basis. The sectoral description in the schedule defines the coverage of relevant commitments, and therefore is crucial in determining the nature and scope of any given commitment undertaken. Moreover, as discussed above, a number of important general obligations under AP6 apply only to sectors where specific commitments are undertaken, as is the case, for example, of obligations regarding domestic regulation and on payments and transfers. Moreover, even for the general obligation of the Most-Favoured-Nation Treatment (Article 3) which applies to any measures affecting trade in services, regardless of whether or not services are listed in the schedule, it is also necessary to identify the

service concerned as it is about the treatment accorded to like services and service suppliers among Members.<sup>37</sup>

Following the GATS practice, CEFTA countries have generally scheduled their commitments according to the WTO Services Sectoral Classification List (MTN.GNS/W/120), which is a classification based on the UN 1991 Provisional Central Product Classification (CPC) establishing an implicit relationship between them.<sup>38</sup> Sectors listed in the W120 can be identified in the CPC by the corresponding number. The scheduling of specific commitments under AP6 have made direct reference to the Provisional CPC, and in some sectors to the CPC Version 2<sup>39</sup>, annotating the division, group, class or sub-class of services to which the commitments apply.<sup>40</sup> The CPC is highly disaggregated, distinguishing amongst almost 600 services, hence allowing for very specific and targeted commitments.<sup>41</sup>

The legal nature of a schedule as well as the need to evaluate commitments, require the greatest possible degree of clarity in the description of each sector or sub-sector scheduled and of whatever limitation a government has decided to maintain and inscribe in its schedule. The classification of a sector/sub-sector can have significant implications for Member countries as it can determine the nature and scope of any given commitment which is undertaken. In order to assess the depth and scope of the commitments adopted by Kosovo it is important to highlight some general issues regarding scheduling and commitments in AP 6 in the light of the GATS experience and jurisprudence, as they are relevant to the understanding of the nature and scope of the commitments under AP 6 and their potential implications. In this regard four issues are of particular importance: scope of the commitments, standard of treatment, technological neutrality, and relation between Mode 1 and Mode 2.

### **Scope of the commitments**

When a Member makes a market access commitment in a sector or sub-sector, that commitment covers all services that fall within the scope of that sector or sub-sector. A Member does not fulfil its obligations if it allows market access for only some of the services covered by a committed sector or sub-sector while prohibiting all others. As confirmed by the WTO Appellate Body "as the CPC is a decimal system, a reference to an aggregate category must be understood as a reference to all of the constituent parts of that category. Put differently, a reference to a three-digit CPC Group should, in the absence of any indication to the contrary, be understood as a reference to all the four-digit Classes and five-digit Sub-classes that make up the group; and a reference to a four-digit Class should be understood as a reference to all of the five-digit Sub-classes that make up

<sup>37</sup> Zhang Rousi (2015). "Covered or not covered: That is the question – Services classification and its implications for specific commitments under the GATS". WTO Staff Working Paper, No ERSD-2015-11. World Trade Organization.

<sup>38</sup> In the GATS negotiations there are however four examples of sectors where the use of ad-hoc scheduling approaches as opposed to reference to the CPC was agreed to by WTO members. These are the air transport annex, the scheduling of commitments in the agreement on basic telecommunications, the financial services annex and the draft model schedule in maritime transport.

<sup>39</sup> United Nations Publication: ST/ESA/STAT/SER.M/77/Ver.2.2008. Commitments on the following sectors have been inscribed based on CPC Rev 2: Speciality design services (CPC 87905; postal and courier services CPC 681 and 682); telephony and communication services; (CPC 841); internet telecommunication services (CPC 842); and online content (CPC 843). An issue that might arise is the comparability of commitments by CEFTA countries under AP 6 and in the GATS.

<sup>40</sup> The CPC hierarchy consists of Sections designated by one-digit codes, Divisions designated by two-digit codes, Groups designated by three-digit codes, Classes designated by four-digit codes, and sub-classes designated by five-digit codes.

<sup>41</sup> Each new version of the CPC states in its introduction that "all previous draft versions become obsolete". Compared with the provisional version of 1991, the latest two versions, Rev 2, and 2.1, contain important changes, in particular related to fast developments in services. In this context, one may wonder whether W/120 was still adequate to serve CEFTA AP 6 negotiations and future ones. One reason might have been to keep consistency with commitments adopted under the GATS by CEFTA countries WTO Members.

that Class”.<sup>42</sup> This means that a specific commitment in a sector or sub-sector is a guarantee that the whole of that sector, that is all the services included in that sector or sub-sector are covered by the commitment. If a CEFTA member would have wanted to restrict market access with respect to certain services falling within a sector or sub-sector, it should have set out restrictions or limitations on access in the appropriate place in its schedule.

Most of the specific commitments made by Kosovo in AP 6 have been at the three and four CPC digit level; in some sectors the commitment has been inscribed at the five digit level providing a much more targeted scope of the activities involved. However, regarding some services sectors the commitments of CEFTA countries, including Kosovo, have been made at the Division level (two digits), which means that all the activities included in that division are covered by the specific commitments made. These are the cases of Computer and related services (CPC 84); Rental or leasing services without operator (CPC 83); and Distribution services (CPC 61 and 62). This means that all the services included in that division are covered by the specific commitments made, which implies a significant number of different services in relation to which Kosovo has bound itself to market access and national treatment obligations. In the case of banking services there is no reference to the corresponding CPC number, which could turn to be problematic in case of assessing the fulfilment of the obligations under AP 6.

And issue that should be noted is that in the CPC, in many sectors there is the category “Other services n.e.c”, which would have been included when adopting commitments at different levels of the CPC. If this category has not been explicitly excluded from the commitments it means that any new service that emerges and that could be classified under that division, group or class will automatically be covered by the commitments undertaken if they are adequately captured by the commitments and thus the corresponding classifications. To grasp the potential implication of this is worthwhile to compare the different computer services covered under the provisional CPC (Division 84) and the CPC 2.1 published in 2015 (Division 83); the latter has included a significant number of computer services that did not exist when the Provisional CPC was adopted.<sup>43</sup>

### **Standard of Treatment**

In AP 6 CEFTA countries have undertaken, as in the GATS, a minimum standard of treatment approach, guaranteeing to services providers from other CEFTA countries that barriers to trade in services will not go beyond what is scheduled in the member Schedule of Specific Commitments. The obligation that emanates from the adoption of specific commitments under AP 6 is to accord services and service suppliers of any other CEFTA member *treatment no less favourable* than that provided for under the terms, limitations and conditions specified in the country’s Schedule of specific commitments. That means that a member cannot impose a more restrictive trade regime than the one defined by its specific commitments. However, this does not mean that a country cannot have a more liberal trade regime in effect. Therefore, it is possible to have a difference between the bound level of trade restrictiveness and the actual trade regime. The difference is called “water in the schedules”. For the most Kosovo has bound the actual trade regime governing the different services sectors. An exercise that should be undertaken, which is far beyond the scope of this document, is the assessment of the extent of “water” in the schedules of all CEFTA

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<sup>42</sup> Panel Report on United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services (challenger Antigua and Barbuda) WT/DS 285/R, circulated November 10, 2004, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e/285\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/dispu_e/285_e.pdf) Also, Appellate Body Report on US - Measures Affecting the Cross-Border Supply of Gambling and Betting services, WT/DS285/AB/R circulated 7 April 2005



members in order to have a better understanding of the real extent of existing liberalization of trade in services in the region.<sup>44</sup>

### ***Technological Neutrality***

In the context of the GATS the principle of technological neutrality seems to be now generally acknowledged in the sense that the Agreement makes no distinction between the different technological means by which a service may be delivered - whether in person, by mail, by telephone or across the Internet. This interpretation is based in that in the WTO the legal regime governing a given transaction is determined by the nature of the product which is traded, not by the production technique or by the mode of delivery, and also on the basis of some rulings of the Dispute Settlement Body (DSB). However, the interpretation by the DSB in some case has been criticized by various analysts as an instance of judicial overreach.

It should be emphasized however, that this issue is not settled at the multilateral level. For some WTO Members the GATS is fundamentally technologically neutral, and Member commitments need to be interpreted in view of evolving technologies. In the view of these Members, GATS principles apply to the delivery of services by electronic means and that market access and national treatment commitments made by WTO Members in their GATS Schedules of commitments guarantee the market access and national treatment conditions which bind each WTO Member for those services can be provided in a "traditional" format, but also through electronic means if its delivery by this way becomes available. For other Members this view is highly problematic since this would essentially mean that services that simply were not considered by Members when adopting specific commitments would be presumed to have been committed if technology evolves in time allowing the delivery such services by electronic means.<sup>45</sup>

This is a complex issue with potential significant implications in determining the scope of the commitments adopted by CEFTA countries in the AP 6, which would have to be address as soon as possible, in order to provide clarity and predictability to the effects of the binding specific commitments scheduled by all CEFTA members, particularly as all electronic transactions have been defined as trade in services. CEFTA members must carefully consider if these commitments extend to services electronically supplied across borders. In fields such as educational, medical, and other regulated service sectors, the potential consequences of these commitments must be taken seriously.

### ***Relation between Mode 1 and Mode 2***

In the framework of the GATS an issue in which there has been a longstanding disagreement among experts and among WTO Members has been over whether Internet based services are delivered as Mode 1 or Mode 2.<sup>46</sup> The question is whether the Internet service is providing the service across borders (Mode 1) or a consumer is "traveling" abroad in order to access an Internet service (Mode 2). This issue is not substantially relevant if a country has made exactly the same commitments on Mode 1 and Mode 2. A review of Kosovo's commitments at the sectoral level reveals that in the vast majority of services sectors, with the exception of insurance and banking sectors, the commitments on Mode 1 and Mode 2 adopted by Kosovo are the same. Therefore, in interpreting

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<sup>44</sup> For a methodology and similar assessment refer to: Miroudot, S. and K. Pertel (2015), "Water in the GATS: Methodology and Results", OECD Trade Policy Papers. No. 185, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5jrs6k35nnf1-en>

<sup>45</sup> R.V.Anuradha (2018). "Technological Neutrality: Implications for Services Commitments and the Discussions on E-Commerce", Working Paper CWS/WP/200/51. Centre for WTO Studies. Indian Institute of Foreign Trade. October

<sup>46</sup> Usman Ahmed, Brian Bieron, and Gary Horlick1 (2015). "Mode 1, Mode 2, or Mode 10: How Should Internet Services Be Classified in the Global Agreement on Trade in Services?" Boston University. International Law Journal: Current Topics in International Law [www.bu.edu/ilj](http://www.bu.edu/ilj) November.

the commitments in sectors other than insurance and banking there should be no major problem. The relationship between Mode 1 and Mode 2 in insurance and banking services, sectors in which clarity is highly relevant due to the potential implications of different interpretations, is an issue that would have to be discussed at the CEFTA level and reach a common understanding on how to interpret the *specific* commitments adopted by CEFTA countries. The same in all those sectors in which the relation between Mode 1 and Mode 2 is not completely settled and is relevant for establishing the scope of the commitments undertaken..

## VI. The road ahead

From the above discussion is evident there are a number of issues that should be tackled as soon as AP 6 is ratified by CEFTA members and comes into effect. In the case of Kosovo some issues demand a national response; but there are other that will require reaching a common understanding among CEFTA members on the interpretation of some of the provisions of AP 6. As noted, AP 6 has transposed some of the unsettled issues in the GATS that are subject to discussion today. Besides these issues, AP 6 incorporates a built-in agenda that should receive priority attention by the MTI.

The built-in agenda in AP 6 foresees negotiations in three important areas. As provided by Article 10.8, the Parties will review issues of domestic regulation within two years of the entry into force of AP 6; and *“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”*. Negotiations on disciplines on domestic regulation have proven to be a very complex issue in the framework of the GATS, and after many years of negotiations still there is no clear outcome. The MTI should carefully study the process and the issues at stake in the GATS negotiations on domestic regulation to get prepared for confronting this negotiations under AP 6.

Furthermore, AP 6 Article 20 contemplates negotiations to further liberalize trade in services that should take place no later than three years after the entry into force of the Protocol. This is another area where Kosovo should in a timely manner start all the analytical assessment required and the necessary preparatory work to define its offensive and defensive interests. It is expected that prior to any negotiations an 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) must be undertaken. This task is already ongoing through a project launched by CEFTA Secretariat, but prior to launching negotiations this exercise must be updated to capture the reality at the moment.

Finally, Article 11.4, provides that 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”*. This process has been launched by the Regional Cooperation Council (RCC) and has reached a standstill. This is a mandate emanating from AP 6 and negotiations on a different fora, which have excluded one CEFTA member, raise a number of issues that must be seriously addressed by CEFTA members.

There is no mandate to start negotiations on e-commerce. Article 18.4 only provides that Parties “shall maintain a dialogue on regulatory issues raised by electronic commerce”.<sup>47</sup> An issue that should be discussed and clarified, as highlighted *supra* in the light of the ongoing discussions concerning the GATS provisions, is how cross-border Internet-based service transactions will be treated under AP 6, as it equates all electronic transactions as trade in services; and there are many unresolved classification and other issues pertaining to services transactions through the

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<sup>47</sup> Dialogue 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; and, (e) any other issue relevant for the development of electronic commerce.

## ANNEX

### CONSOLIDATED SCHEDULE OF SPECIFIC COMMITMENTS ON TRADE IN SERVICES OF CEFTA PARTIES: KOSOVO

#### EXPLANATORY NOTES

This “Consolidated Schedule of Specific Commitments on Trade in Services of CEFTA Parties” is based on the United Nations Central Product Classification (CPC) list used in services negotiations in the World Trade Organization, but it also includes some services as described by the CPC Version 2 (United Nations Publication ST/ESA/STAT/SER.M/77/Ver.2).

This Schedule is consistent with the GATS scheduling practice and indicates only those services sectors and subsectors in which the Parties are undertaking commitments. With respect to market access and national treatment commitments, the different modes of supply indicated in the Schedule are as follows:

Mode 1: from the territory of one Party into the territory of any other Party;

Mode 2: in the territory of one Party to a service consumer of any other Party;

Mode 3: by a service supplier of one Party, through commercial presence in the territory of any other Party; and

Mode 4: by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party.

For the purpose of this Schedule, when commitments are undertaken by all the Parties to CEFTA 2006, this is indicated by the notation “All CEFTA Parties”. Otherwise, commitments by individual Parties are indicated by the following abbreviations below, in the order as listed in the preamble of CEFTA 2006, but excluding the Parties that have withdrawn from the Agreement in accordance with Article 51. [Kosovo is PVII]

## A. HORIZONTAL COMMITMENTS

### 1. Acquisition of land and real estate

**PVII** – Natural and juridical persons of another Party may acquire rights in real estate in **PVII**, unless otherwise provided by law (non-discriminatory restrictions). Limitations apply to agricultural land and forestry land.

### 3. Registration of companies

**All CEFTA Parties**– A representative office is a part of a company without having the status of a juridical person. Such offices may only engage in market research, promotional, or representational activities. They may not perform commercial activities.

### 4. Public utilities

**All CEFTA Parties:**

Services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators. These may exist in the following areas: energy services; water; public transport services and services auxiliary to all modes of transport; scientific and technical consulting services; research and development services on social sciences and humanities; technical testing and analysis services; environmental services; public health and public social services; communication services and public education services. Exclusive rights on such services may be granted to national or local private operators on a preferential basis.

### 5. The presence of natural persons

**All CEFTA Parties** except **PV**:

Unbound except for measures concerning the entry into and temporary stay of the following categories of natural persons providing services: key personnel (business visitors, intra-corporate transferees); trainees; business service sellers; contractual services suppliers; independent professionals; and short-term visitors for business purposes, as defined in the Annex 1 to the Additional Protocol 6 on Trade in Services.

## B. SPECIFIC COMMITMENTS

SECTOR OR SUB-SECTOR	LIMITATIONS ON MARKET ACCESS	LIMITATIONS ON NATIONAL TREATMENT
<b>1. BUSINESS SERVICES</b>		
Legal Services (CPC 861)		
Legal services (861) - Consultancy on home jurisdiction, foreign and international law (part of CPC 861) (except notaries, private bailiffs and legal documentation and certification services provided by service suppliers entrusted with public functions) PII, PIII, PV, PVI, PVII	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 – None
Accounting, Auditing and Bookkeeping Services (CPC 862) PII, PVI, PVII	Mode 1 - None, except official audit reports must be confirmed by an auditing firm registered in the domestic jurisdiction and signed by an auditor licensed there.  Modes 2, 3, 4 – None	Modes 1, 2, 3, 4 - None, except as indicated in the market access column.
Taxation Services (CPC 863) All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Architectural services (CPC 8671) All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Engineering services (CPC 8672) All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Integrated engineering services (CPC 8673) All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None

Urban planning and landscape architectural services (CPC 8674) All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Medical and dental services (excluding public health institutions) (CPC9312) PI, PII, PIII, PV, PVI, PVII	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Veterinary Services (CPC 932), excluding public institutions All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Services of midwives, nurses, physiotherapists, paramedical personnel (CPC 93191) excluding public health institutions All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Computer and Related Services (CPC 84) All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Research and development services (CPC 851-853) PI, PII, PIV, PV, PVI, PVII	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Real Estate Services (CPC 821 & 822) All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Rental or Leasing Services without Operator (CPC 83) All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None

Rental or leasing of studio recording equipment (CPC 83109)** All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Advertising Services (CPC 871) All CEFTA Parties	Modes 1, 2, 3, 4 – None	Modes 1, 2, 3, 4 - None
Market research and public opinion polling services (CPC 864) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Management consulting services (CPC 865) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Services related to management consulting (CPC 866) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Technical testing and analysis services (CPC 8676) (Excluding services related to issuance of mandatory certificates and similar official documents other than those for which recognition of validity of certificates or documents of another Party is prescribed). All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Advisory services incidental to agriculture and forestry only (part of CPC 881) PII, PV, PVI, PVII	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Advisory and consulting services relating to hunting (part of CPC 881) PII, PV, PVI, PVII	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None



Advisory and consulting services relating to fishing (part of CPC 882) PII, PV, PVI, PVII	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Services incidental to mining (CPC 883) Site preparation work for mining (CPC 5115) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Services incidental to manufacturing (CPC 884) Services incidental to the manufacture of metal products, machinery and equipment (CPC 885) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Advisory and consulting services incidental to energy distribution (part of CPC 887) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Placement and supply services of personnel (CPC 872) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Related scientific and technical consulting services (CPC 8675) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Maintenance and repair of equipment (CPC 633+8861 to 8866) Maintenance and Repair of motorcycles and snowmobiles (CPC 6122) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Building cleaning services (CPC 874) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None

Photographic services (CPC 875) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Packaging services (CPC 876) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Printing and publishing (88442), excluding printing and publication of the Official Gazette All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Convention services – Planning, Managing and Marketing Services for Conventions and Similar events (CPC 87909*) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Translation and interpretation services (CPC 87905) excluding services of sworn interpreters All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Specialty design services (CPC 87907*) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None
Hair dressing and Barbers' services (CPC 97021) All CEFTA Parties	Modes 1, 2, 3, 4 - None	Modes 1, 2, 3, 4 - None

**2. COMMUNICATIONS SERVICES**

Postal and Courier Services <sup>48</sup> (CPC 68)		
<p>(i) Postal Services related to letters (CPC 68111): Collection, transport and delivery services for newspapers, journals and periodicals, whether for domestic or foreign destinations, other than those rendered under a universal service obligation.</p> <p>(ii) Collection, transport and delivery services for letters, brochures, leaflets and similar printed matter, whether for domestic or foreign destinations, other than those rendered under a universal service obligation, excluding items less than 350 grams in weight and whose price is less than five times the public basic tariff, excluding registered mail service used in judicial or administrative procedure.</p> <p>(iii) Postal services related to parcels (CPC 68112): collection, transport and delivery services for parcels and packages, whether for domestic or foreign destinations, other than those rendered under a universal service obligation, excluding items less than 350 grams in weight and whose price is less than five times the public basic tariff, excluding registered mail service used in judicial or administrative procedure.</p>	<p>Mode 1,2,3,4 None</p>	<p>Mode 1,2,.3,.4 None</p>

<sup>48</sup> Based on CPC Version 2 (United Nations Publication ST/ESA/STAT/SER.M/77/Ver.2).

<p>Courier Services (CPC 6812)</p> <p>(i) Collection, transport and delivery services, whether for domestic or foreign destinations, for letters, parcels and packages, as rendered by courier and using one or more modes of transport, other than those rendered under a universal service obligation.</p> <p>(ii) Messenger services provided by bicycle couriers.</p> <p>(iii) Local delivery services of items such as food and other purchases (CPC 6813).</p> <p>All CEFTA Parties</p>	<p>Mode 1,2,3,4, None</p>	<p>Mode 1,2,3,4 None</p>
<p>Telecommunications and Information Supply Services</p>		
<p>Telephony and other telecommunications services (CPC 841)<sup>49</sup></p>		
<p>Carrier services (CPC 8411)</p> <p>Fixed telephony services (CPC 8412)</p> <p>Mobile telecommunications services (CPC 8413)</p> <p>Private network services (CPC 8414)</p> <p>Data transmission services (CPC 8415)</p> <p>Other telecommunications services (CPC 8419)</p> <p>All CEFTA Parties</p>	<p>Mode 1,2,3,4 None</p>	<p>Mode 1.2.3.4 None</p>

<sup>49</sup> Based on CPC Version 2 (United Nations Publication ST/ESA/STAT/SER.M/77/Ver.2).

<p>Internet telecommunications services (CPC 842)<sup>50</sup>          Internet backbone services (CPC 8421)          Internet access services (CPC 8422)          Other Internet telecommunications services (CPC 8429)          All CEFTA Parties</p>	<p>Mode 1,2,3,4 None</p>	<p>Mode 1,2,3,4 Mode</p>
<p>Online Content (CPC 843)<sup>51</sup>          All CEFTA Parties</p>	<p>Mode 1, 2, 3, 4 - None</p>	<p>Mode 1, 2, 3, 4 - None</p>

<sup>50</sup> Based on CPC Version 2 (United Nations Publication ST/ESA/STAT/SER.M/77/Ver.2).

<sup>51</sup> Based on CPC Version 2 (United Nations Publication ST/ESA/STAT/SER.M/77/Ver.2).

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES		
<p>Pre-erection work at construction sites (CPC 511)</p> <p>Construction work for buildings (CPC 512)</p> <p>Construction work for civil engineering (CPC 513)</p> <p>Assembly and erection of prefabricated constructions (CPC 514)</p> <p>Special trade construction work (CPC 515)</p> <p>Installation work (CPC 516)</p> <p>Building completion and finishing work (CPC 517)</p> <p>Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (CPC 518)</p> <p>Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (CPC 518)</p> <p>All CEFTA Parties</p>	<p>Mode 1,2,3,4 None</p>	<p>Mode 1,2,3,4 None</p>
4. DISTRIBUTION SERVICES		
<p>(CPC Ver.2, Sections 61 &amp; 62, excluding trade of explosives, weapons and ammunition and, for PVI, trade of genetically modified organisms)</p> <p><u>Wholesale trade services</u><sup>[SEP]</sup></p> <p>Wholesale trade services, except on a fee or contract basis<sup>[SEP]</sup></p> <p>Wholesale trade services on a fee or contract basis</p> <p><u>Retail trade services</u></p> <p>Non-specialized store retail trade services</p> <p>Specialized store retail trade services<sup>[SEP]</sup></p> <p>Mail order or internet retail trade services</p>	<p>Mode 1,2,3,4 None</p>	<p>Mode 1,2,3,4 None</p>

<p>Other non-store retail trade services Retail trade services on a fee or contract basis All CEFTA Parties</p>		
<b>5. EDUCATION SERVICES</b>		
<p>(Only privately-funded services) Primary education services (CPC 921) Secondary education services (CPC 922) Higher education services (CPC 923) Adult education (CPC 924) Other education services (CPC 929) PI, PII, PIV, PV, PVI, PVII</p>	Mode 1,2,3,4 None	Mode 1,2,3 4 None
<b>6. ENVIRONMENTAL SERVICES</b>		
<p>A. Wastewater management (wastewater services corresponds to sewage services) (CPC 9401) B. Solid/Hazardous waste management - Refuse disposal services (CPC 9402) - Sanitation and similar services (CPC 9403) C. Protection of ambient air and climate: - Cleaning services of exhaust gases (CPC 9404) D. Remediation and cleanup of soil and waters: - Treatment, remediation of contaminated/polluted soil and water (part of CPC 9406) Corresponds to parts of Nature and landscape protection services. E. Noise and vibration abatement (CPC 9405) F. Protection of biodiversity and landscape:</p>	Mode 1,2,3 4 None	Mode 1,2,3 4 None

<p>- Nature and landscape protection services (parts of CPC 9406 not covered under D)  G. Other Environmental Services (CPC 9409)  H. Environmental Consulting Services (CPC 83931)  All CEFTA Parties</p>		
<b>7. FINANCIAL SERVICES</b>		
<p><u>Insurance and insurance-related services, CPC 812</u>  PVII</p>		
<p>Life, accident and health insurance services, (CPC 8121)</p>	<p>Mode 1 - Unbound  Modes 2, 3, 4 - None</p>	<p>Mode 1 - Unbound  Modes 2, 3, 4 - None</p>
<p>Non-life insurance services (CPC 8129)  (Except for cases of insurance of risks connected to sea or air transportation and when the risk is not covered by the domestic company or the branch of the company of another Party, which carries out its activity PVII (The company must be registered in PVII).</p>	<p>Mode 1 - Unbound  Modes 2, 3, 4 - None</p>	<p>Mode 1 - Unbound  Modes 2, 3, 4 - None</p>
<p>Reinsurance and retrocession (CPC 81299*)  (Only for the risks insured by insurance companies of another Party and for the risks that domestic reinsurers are not able to cover themselves. Based on domestic rules of the Central Bank of PVII, insurance companies cannot hold risk for an event exceeding 10% of their capital.)</p>	<p>Mode 1 - Unbound  Modes 2, 3, 4 - None</p>	<p>Mode 1 - Unbound  Modes 2, 3, 4 - None</p>
<p>Services auxiliary to insurance (including brokering and agency services) (CPC 8140)</p>	<p>Mode 1 - Unbound  Modes 2, 3, 4 - None</p>	<p>Mode 1 - Unbound  Modes 2, 3, 4 - None</p>
<p>Banking and Other Financial Services  (excluding insurance)</p>		



PVII		
<p>a. Acceptance of deposits and other repayable funds from the public</p> <p>b. Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transactions</p> <p>c. Financial leasing</p> <p>d. All payment and money transmission services</p> <p>e. Guarantees and commitments</p> <p>f. Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, of the following:</p> <ul style="list-style-type: none"> <li>- money market instruments (cheques, bills, certificate of deposits, etc.)</li> <li>- foreign exchange</li> <li>- exchange rate and interest rate instruments, including products such as swaps, forward rate agreements, etc.</li> </ul> <p>g. Participation in issues of all kinds of securities, including under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues</p> <p>h. Money brokering</p> <p>i. Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services</p> <p>j. Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments</p> <p>k. Advisory and other auxiliary financial services including credit reference and analysis, investment and portfolio research and advice, advice on</p>	<p>Mode 1 - Unbound</p> <p>Mode 2 - None</p> <p>Mode 3 - Only licensed banks and other financial institutions.</p> <p>Mode 4 - None</p>	<p>Mode 1 - Unbound</p> <p>Modes 2, 3, 4 - None</p>

<p>acquisitions and on corporate restructuring and strategy</p> <p>I. Provision and transfer of financial information, and financial data processing and related software by providers of other financial services.</p>		
<b>8. HEALTH-RELATED AND SOCIAL SERVICES</b>		
<p>(only private funded services)</p> <p>Hospital services<sup>52</sup> (CPC 9311)</p> <p>Other human health services (CPC 9319)</p> <p>PVII</p>	<p>Mode 1 - Unbound</p> <p>Modes 2, 3, 4 - None</p>	<p>Mode 1 - Unbound</p> <p>Modes 2, 3, 4 - None</p>
<b>9. TOURISM AND TRAVEL-RELATED SERVICES</b>		
<p>Hotels and restaurants including catering (CPC 641-643)</p> <p>Travel agencies and tour operator services (CPC 7471)</p> <p>Tourist guides services (CPC 7472)</p> <p>All CEFTA Parties</p>	<p>Modes 1, 2, 3, 4 - None</p> <p>PI - One year residency requirement for tourist guides.</p> <p>PII, PIII, PVI, PVII - nationality and residency requirement for tourist guides.</p>	<p>Modes 1, 2, 3, 4 - None, except as indicated in the market access column.</p>

<sup>52</sup> Private health activities are not allowed in the following fields: collection of blood and its derivatives; forensic medicine and autopsy services; epidemiology services (besides disinfection, disinsection and preventive deratization), human ecology, and environmental microbiology.

<b>10. RECREATIONAL, CULTURAL AND SPORTING SERVICES</b>		
<p>A. Entertainment services (including theatre, live bands and circus services) (CPC 9619)</p> <p>B. News agency services (CPC 962)</p> <p>C. Libraries, archives, museums and other cultural services (CPC 963)</p> <p>D. Sporting and other recreational services (CPC 964) (excluding betting and gambling for Mode 1).</p> <p>PVII</p>	<p>Modes 1, 2, 3, 4 - None</p>	<p>Modes 1, 2, 3, 4 - None</p>
<b>11. TRANSPORT SERVICES (excluding cabotage)</b>		
<u>A. Maritime Transport Services</u>		
<p>a. Passenger transportation, (CPC 7211)</p> <p>b. Freight transportation, (CPC 7212)</p> <p>PVII</p>	<p>Mode 1 - (a) Liner shipping: None</p> <p>b) Bulk, tramp and other international shipping, including passenger transportation: None</p> <p>Mode 2 - None</p> <p>Mode 3 - (a) Establishment of a registered company for the purpose of operating a fleet under the PVI flag: Unbound.</p> <p>(b) Other forms of commercial presence for the supply of international maritime transport services: None.<sup>53</sup></p> <p>Mode 4 - (a) Ship's crews: Unbound; (b) None</p>	<p>Mode 1 - None</p> <p>Mode 2 - None</p> <p>Mode 3 - (a) Unbound</p> <p>(b) None</p> <p>Mode 4 - (a) Ship's crews: Unbound (b) None</p>
<u>E. Rail Transport Services</u>		

<sup>53</sup> "Other forms of commercial presence for the supply of international maritime transport services" means the ability for international maritime transport service suppliers of other Parties to undertake locally all activities which are necessary for the supply to their customers of a partially or fully integrated transport service, within which maritime transport constitutes a substantial element. (This commitment shall however not be construed as limiting in any manner the commitments undertaken under the cross-border mode of delivery.)

<p>a. Passenger transportation (CPC 7111) b. Freight transportation (CPC 7112) c. Pushing and towing services (CPC 7113) PVII</p>	<p>Modes 1, 2, 3, 4 - None</p>	<p>Modes 1, 2, 3, 4 - None</p>
<p><u>F. Road Transport Services</u></p>		
<p>a. Passenger transportation (CPC 7121+7122) b. Freight transportation (CPC 7123) c. Rental of commercial vehicles with operator (CPC 7124) d. Maintenance and repair of road transport equipment, (CPC 6112+8867) e. Supporting services for road transport services (CPC 744) PVII</p>	<p>Mode 1 - Unbound Modes 2, 3, 4 - None</p>	<p>Mode 1 - Unbound Modes 2, 3, 4 - None</p>