

(ΕΓΓΡΑΦΟ Γ']

VI. REQUESTS TO THE EC

The EC has received requests from a number of WTO Members (list attached as Annex I). A short description of the requests is set out in the following pages. For each sector there is a short description of the scope of the sector, the EC's current commitments, and the nature of the requests received.

Given that further requests may be submitted to the EC after the publication of this document, the Commission will update the description as necessary on its website where this document will be posted. So we invite you to check this document from time to time for possible updates.

The Commission invites all interested parties to examine this document and to submit their comments. In preparing your comments, you might like to address one or more of the following issues:

- The impact (either positive or negative) that individual requests might have on – for example business, consumers – if the EC and its Member States were to decide to agree to the request;
- Whether or not the EC and its Member States should agree to a request, either fully or in part, with an explanation of your reasons.

HORIZONTAL COMMITMENTS

INVESTMENT REGIME

A. Current EC commitments

In its schedule of specific commitments, the EC has inscribed limitations related to the investment regime. The limitations can be grouped in three categories:

- ♦ at EC level, subsidiaries of third-country companies are treated like any company created by EC investors, and benefit from the advantages of the single market. In various sectors, that encompasses benefiting from the single passport within the EC, i.e. from the freedom to branch and to provide cross-border services within the EC. On the contrary, direct branches from third-country companies do not enjoy the same advantages. Moreover, in order to enjoy those benefits, subsidiaries need to show that they possess an “effective and continuous link” with the economy of the EC;
- ♦ authorisation by public authorities of investment is required in several Member States, if the investment is above certain levels (Finland, France and Portugal), is performed by government-controlled entities (in Spain) or concerns certain sectors, such as defence, transport, telecommunications and energy (in Italy);
- ♦ foreign participation in privatised companies may be limited (France, Italy and Portugal).

B. Requests to the EC

Most of the requests submitted, both from developing and developed countries, address these limitations. Some of the requests ask for clarification, but most requests are seeking elimination of those limitations.

REAL ESTATE

A. Current EC commitments

1. Two Member States (Denmark and Greece) have scheduled market access restrictions on the purchase of real estate requiring the purchaser to obtain an authorisation from the authorities.

2. Five Member States (Germany, Ireland, Austria, Sweden, Finland) have all scheduled national treatment limitations subjecting the acquisition of land by non-nationals and in some cases leasing of real estate to an authorisation from the authorities. In certain cases the requirement to obtain an authorisation is limited to:

- ♦ Certain geographical areas: Germany, Greece, Ireland, Finland (Åland).
- ♦ Second homes/leisure time dwellings: Sweden, Finland.

3. Italy has scheduled unbound for the purchase of real estate.

Italy has also scheduled an MFN exemption for all sectors and for all countries for an indefinite period combined with a reciprocity requirement.

B. Requests to the EC

Requests covering real estate have been tabled by about half WTO members. They can be described as follows:

- ♦ Elimination of all restrictions: One country plus one country that only seeks elimination in relation to financial, maritime and tourism and related services.
- ♦ Denmark's market access restriction: Removal (five countries), reduce its scope (two countries), or clarify (one country).
- ♦ Greece's market access restriction: Removal (two countries), reduce its scope (one country), or clarify (one country).
- ♦ Germany's national treatment limitation: Removal (four countries) or clarify (three countries).
- ♦ Ireland's national treatment limitation: Removal (five countries), or clarify (two countries).
- ♦ Italy's national treatment limitation: Removal (six countries), narrow its scope (one country), or clarify (one country).
- ♦ Austria's national treatment limitation: Removal (one country), or narrow its scope (two countries).
- ♦ Sweden's national treatment limitation: Removal (two countries).
- ♦ Finland's national treatment limitation for leisure homes: Removal (two countries)
- ♦ Finland's national treatment limitation for Åland: Removal (one country)
- ♦ Italy's MFN Exemption: Removal (five countries)

Μορφοποιημένο: Κουκκίδες και
αρίθμηση

A. MOBILITY OF PERSONS (MODE 4)

Scope of coverage

Mode 4 is the provision of services through the temporary presence of foreign nationals, in other words, when people travel abroad to provide services. Mode 4 is an important means of providing services where personal contact with clients, or travel to the site where the services are to be provided, is a significant element.

The scope of coverage of Mode 4 is limited by a specific Annex to the GATS, which makes clear that the GATS does not apply to permanent migration, residence or employment. It also does not apply to "measures affecting natural persons seeking access to the employment market". Finally, the GATS also makes clear that countries should remain free to regulate the entry and stay and persons into their territory (including in relation to visa policy) provided that the measures adopted do not have a trade restrictive effect. A visa requirement for certain nationalities is not regarded as having a trade restrictive effect.

A. Current EC commitments

In the Uruguay Round, the EC and its Member States made commitments which allow some foreign nationals to temporarily enter the European Union for the purpose of the provision of services. They include commitments made during the extended negotiations on Mode 4 after the end of the Uruguay Round and included in Supplement 2 to the EC's schedule.

These commitments relate to three categories of international service providers and can be summarised as follows:

Intra-corporate Transferees (ICTs): An ICT is an employee of a foreign firm, who is temporarily transferred to an establishment of that firm (subsidiary, branch or office) in the territory of an EU Member State. Commitments are limited to senior and specialised personnel. Entry is permitted without compliance with a labour market test (LMT)¹ (except for Finland), although all other requirements concerning entry, stay, work and social security measures continue to apply. The permitted length of stay is not stated, and national law therefore applies. ICTs must have worked within the company for at least one year prior to transfer.

Business Visitors (BVs): A representative of a foreign services supplier who is seeking temporary entry into the territory of an EU Member State for one of the following purposes: (a) to negotiate the sale of services; (b) to conclude contracts to sell services; or (c) for senior personnel only - to set up an establishment (subsidiary, branch or office). BVs must not make direct sales to the public or supply services themselves. The permitted length of stay is not set out, so national law applies.

Contractual Service Providers (CSS): Employees who work for an overseas company which has obtained a services contract in an

¹ A labour market test is a requirement imposed by governments in order to determine whether or not to allow persons to "work" in that country, based on an assessment of the (un)employment situation.

EU Member State, which involves sending its employees to that EU Member State to fulfil the contract. Commitments have been made for stays of up to three months and for certain sectors only (individual Member States have committed different sectors). Only skilled employees are covered. There is a minimum prior employment requirement of one year (two years for Greece). Entry is permitted without compliance with a LMT (except in the case of France, Italy and the UK, where a LMT may be required for some sectors). All other requirements concerning entry, stay, work and social security measures continue to apply.

Three Member States have listed additional horizontal limitations:

- ◆ France and Italy require that third country nationals who are not permanent residents must have a specific authorisation to carry out “commercial, industrial or artisanal activities”;
- ◆ Austria requires that Managing Directors and persons responsible for the observance of the Austrian Trade Act be resident in Austria.

B. Requests to the EC

Most of the requests received address Mode 4 at a horizontal level (i.e. not sector specific but across all sectors committed). A number of countries have also made requests on Mode 4 for specific sectors of interest. The level of ambition of the requests vary widely, from requests to allow complete free movement of persons providing services, to rather more limited requests to improve transparency.

The most frequently made requests (each made by five or more countries) are as follows:

- ◆ Sectoral coverage of CSS to apply equally to all Member States (in other words, if one Member State has made a commitments on – say – management consulting – this should be made by all Member States),
- ◆ Sectoral coverage of CSS to be extended to cover sectors not currently committed (some countries have specified sectors of interest, whilst others seek a commitment for all service sectors covered by services classification (W/120)),
- ◆ Extend the permitted length of stay for CSS (to between one and three years),
- ◆ Specify the length of stay for ICTs (between three years and indefinite stay),
- ◆ Specify the length of stay for BVs (90 days),
- ◆ Create a new category of ICT for training purposes,
- ◆ France and Italy to remove their limitations on access to industrial, commercial and artisanal activities,
- ◆ Removal of Labour Market Testing requirements,
- ◆ Removal of MFN exemptions (which mostly reflect historic/cultural ties between EC Member States and third countries),

- ♦ Acceptance of the principle that the third country qualifications recognised by one EC Member State should be recognised throughout the EC,
- ♦ Improved transparency of rules and procedures linked to mode 4 (e.g. in relation to work and residence permits), and faster processing times.

In addition, the following requests have been made by two or more countries:

- ♦ Removal of all restrictions, allowing free movement of persons who provide services (two countries have requested this for all categories of service supplier, one country for ICTs only and one country for certain job types only),
- ♦ Commitments on lower skill levels,
- ♦ Commitments on foreign employees of domestic companies (persons recruited directly from overseas),
- ♦ Commitments on independent professionals (self-employed persons established overseas and entering the EC to provide services on the basis of a contract),
- ♦ Allow persons to provide after-sales/after-lease services without requiring a work permit,
- ♦ Austria to remove residence requirement,
- ♦ Automatic work permits for spouses of ICTs,
- ♦ Permit multiple entry for persons covered by commitments.

