



REGULATIONS ON TRADE IN SERVICES

As adopted by Council

PREAMBLE

RECOGNISING the growing importance of the trade in services for the growth and development of the region's economies;

RECALLING the provisions of the COMESA Treaty, with particular reference to Article 3 (b), which provides for the promotion of joint development in all fields of economic activities, as read with Article 4(4)(c), which provides for the removal of obstacles to the free movement of services within the Common Market;

FURTHER RECALLING the provisions of Article 164 of the COMESA Treaty which, among other things provides for the free movement of services, and Articles 151 and 152;

REITERATING, where applicable, their commitments to the rules and principles of the General Agreement on Trade in Services (hereinafter referred to as "GATS") and noting that Article V of GATS permits the liberalisation of trade in services between or among the Member States of an economic integration agreement;

DETERMINED to adopt regional Regulations on Trade in Services in order to enhance the establishment of a fully fledged Common Market and as a means of promoting the economic growth of all Member States taking account of the principles of transparency and progressive liberalization;

RECOGNISING the importance of removing barriers to trade in services through all modes of supply in order to promote competitiveness and diversity, and to increase accessibility across all service sectors through the strengthening of domestic services capacity;

TAKING particular account of the special needs of least developed countries in the liberalization of trade in services sector in accordance with the provisions of Article 148 of the COMESA Treaty;

RECOGNISING the right of member States to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of services regulations in different countries;

TAKING into account the fact that different Member States are at different levels of development and acknowledging development and acknowledging therefore the need to give effect to the principles of variable geometry; and

IN VIEW of further steps which have been taken in order to advance the economic integration of Eastern and Southern Africa;

DO HEREBY ADOPT THESE REGULATIONS AS FOLLOWS:

PRELIMINARY PROVISIONS

**Article 1
Citation**

These Regulations shall be cited as the Regulations on Trade in Services.

**Article 2
Definitions and Interpretation**

1. In these Regulations unless the context otherwise requires:
 - (a) **"Authorisation Scheme"** means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;
 - (b) **"Basic Services"** means services in which universal access is essential for human life or which serve central infrastructural functions.
 - (c) **"Branch"** of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will, if necessary, be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension;
 - (d) **"Business community"** means all commercial and industrial organisations or unions of national chambers of commerce and industry representing agriculture, tourism, commerce, finance, manufacturing, mining and transport, services organisations and professional services associations and/or organisations however styled and established under the laws of a Member State;
 - (e) **"Certification"** refers to the issuance of a certificate or license to those who have met specified requirements for registration;

- (f) "**Commercial communication**" means any form of communication designed to promote, directly or indirectly, the goods, services or image of an undertaking, organisation or person engaged in commercial, industrial or craft activity or practising a regulated profession. The following do not in themselves constitute commercial communications:
- (i) information enabling direct access to the activity of the undertaking, organisation or person, including in particular a domain name or an electronic-mailing address;
 - (ii) communications relating to the goods, services or image of the undertaking, organisation or person, compiled in an independent manner, particularly when provided for no financial consideration;
- (g) "**Committee**" means the Committee on Trade in Services;
- (h) "**Company or firm**" means a company or a firm constituted or registered under the laws of a Member State regulating companies and firms;
- (i) "**Competent authority**" means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;
- (j) "**Co-operation**" includes the undertaking by the Member States in common, jointly or in concert of activities undertaken in furtherance of the objectives of the Common Market as provided for under the Treaty or under any contract or agreement made there under or in relation to the objectives of the Common Market;
- (k) "**Criteria**" or "**Standards**" refers to a specification of qualities required to be met;
- (l) "**Designated airline**" means an airline which has been designated and authorized to operate the agreed services by a competent authority of a Member State;

- (m) **“Establishment”** means any type of business or professional establishment through:
 - (i) the constitution, acquisition or maintenance of a juridical person, or
 - (ii) the creation or maintenance of a branch, a subsidiary, a joint-venture or representative office;
 - (iii) within the territory of a Member State for the purpose of performing an economic activity;
- (n) **“Evidence of formal qualifications”** means Diplomas, certificates and other evidence issued by an authority in a Member State designated pursuant to legislative, regulatory or administrative provisions of that Member State and certifying successful completion of professional training obtained mainly in the Common Market;
- (o) **“Host Country”** refers to the country where the service supplier applies to provide the service;
- (p) **“International standards”** means standards that are adopted by international standardizing or standards organisations and made available to the public;
- (q) **“Internal market”** means the internal market of COMESA;
- (r) **“Investor”** of a Member State means any natural or juridical person that seeks to perform or performs an economic activity through setting up an establishment;
- (s) **“Juridical person”** means a legal person set up in accordance with the laws of a Member State of the COMESA respectively, and having its registered office, central administration, or principal place of business in the territory of the Member State, respectively. Should the juridical person have only its registered office or central administration in the territory of the member State of COMESA, it shall not be considered as a juridical person respectively, unless its operations possess a real and continuous link with the economy of the member State,;
- (t) **“Least developed country”** means any Member State so designated by the Authority;

- (u) **"Member State of establishment"** means the Member State in whose territory the provider of the service concerned is established;
- (v) **"Member State where the service is provided"** means the Member State where the service is supplied by a provider established in another Member State;

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- (w) **"Model Laws"** means the model laws adopted by the Council;
- (x) **"Monetary authority"** means a Central Bank or any other institution authorized by a Member State to issue currency and formulate and monitor the execution of monetary policy within its territory;
- (y) **"National standards bodies"** means all national institutions whose main concern is with standardisation or quality assurance at the national level in the Member States;
- (z) **"National standards"** means standards that are adopted by national standards bodies and made available to the public;
- (aa) **"Natural person"** means a national of one of the member States of the Common Market according to their respective legislation;
- (bb) **"Person"** means a natural or legal person;
- (cc) **"Regulations"** means the COMESA Regulations on Trade in Services;
- (dd) **"Recognition"** refers to acceptance by an authority of demonstration of compliance with requirements;
- (ee) **"Region"** means the geographical area covered by the Common Market;
- (ff) **"Registration"** refers to the process of placing on a Register those who meet specified requirements within a jurisdiction;
- (gg) **"Regulated education and training"** Any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice. The structure and level of the professional training, professional traineeship or practical work experience shall be laid down in the legislative, regulatory or administrative provisions of the Member State in question or be subject to supervision or approval by the authority designated for that purpose;
- (hh) **"Requirement"** means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States' administrative practice, the rules of professional bodies, or the collective rules of professional

associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of these Regulations;

- (ii) **"Services"** means services provided by a natural person, juridical entity
- (jj) **"Service supplier of a Member State"** means any natural or juridical person of a Member State that seeks to supply or supplies a service;
- (kk) **"Subsidiary"** of a juridical person of a member State means a juridical person which is effectively controlled by another juridical person of another member State;
- (ll) **"Telecommunications"** means any form of transmission, emission or reception signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electro magnetic systems;
- (mm) **"Telecommunications administrations"** means the relevant authority designated by the government and any other recognized operating agencies accepted by the Member States for the purpose of administering telecommunication, including a telecommunication service supplier where the relevant authority or recognized operating agencies are not provided for.
- (nn) **"Third country"** means any country other than a Member State;

AIMS, OBJECTIVES AND FUNDAMENTAL PRINCIPLES

Article 3

Aims and Objectives of the Regulations

1. The aims and objectives of these Regulations shall be:
 - (a) to attain sustainable growth and development of the Member States by eliminating the barriers to trade in services especially those faced by small and medium scale enterprises (SMEs) exporters so as to deepen integration for attainment of a common market with a view to enhancing universal access to services.
 - (b) to enhance cooperation in services amongst Member States in order to improve the efficiency and competitiveness of their services markets, including by diversifying production capacity and supply, and enhancing the distribution of services of their service suppliers within and outside the Common Market, with a view to promoting economic growth, wealth creation and poverty reduction;
 - (c) to liberalize trade in services by expanding the depth and scope of liberalization in line with Article V of the GATS; and
 - (d) to increase, improve and develop the export of services.

Article 4

Fundamental Principles

1. The Member States, in pursuit of the aims and objectives stated in Article 3 of these Regulations, and under the COMESA Treaty agree to adhere to the following principles:
 - (a) the GATS principles as guiding principles for negotiating services at the regional level;
 - (b) in terms of sequencing, Member States shall give priority consideration to fulfil their obligations under these Regulations without however causing prejudice to Member States' rights to enter into preferential agreements among themselves or with third countries;
 - (c) the region's liberalisation in trade in services will be undertaken in conformity with the provisions of GATS Articles V and XIX on progressive liberalisation basis using a positive list approach adapted to the development of the member States both in overall

terms and in terms of their services sectors and sub-sectors and to their specific constraints;

- (d) the right to regulate as essential to meet national policy objectives;
- (e) provision for Special and Differential Treatment; and
- (f) provision for variable geometry.

SCOPE

Article 5

Scope of Application

1. In conformity with GATS Agreement, the scope of these Regulations shall cover measures by Member States affecting trade in services supplied through the following modes:

- (a) from the territory of one Member State into the territory of any other Member, mode 1;
- (b) in the territory of one Member State to the service consumer of any other Member State, mode 2;
- (c) by a service supplier of one Member State, through commercial presence in the territory of any other Member State, mode 3; and
- (d) by a service supplier of one Member State, through presence of natural persons of a Member State in the territory of any other Member State, mode 4.

2. For the purposes of these Regulations:

- (a) "Measures by Member States" means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) Non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under these Regulations, each Member State shall take such reasonable

measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

- (b) "Services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (c) For the purpose of these Regulations, a " service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers including the following:
 - (i) activities conducted by a central bank or monetary authority or any other public entity, in pursuit of monetary or exchange rate policies;
 - (ii) activities forming part of a statutory system of social security or public retirement plans; activities forming part of a system of national security or for the establishment or maintenance of public order;
 - (iii) Other activities conducted by a public entity for the account of or with the guarantee or using financial resources of the government: and
 - (iv) basic services.

GENERAL OBLIGATIONS AND DISCIPLINES

Article 6

Most Favoured Nation Treatment

1. With respect to any measure covered by the Regulations, each Member State shall accord immediately and unconditionally to services and service suppliers of any other Member State treatment no less favourable than it accords to like services and service suppliers of any other country;
2. Notwithstanding paragraph 1, two or more Member States may conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors in accordance with the objectives of these Regulations. An extension of such preferential treatment to the remaining Member States shall be on a reciprocal basis.
3. Nothing in these Regulations shall prevent a Member State from entering into new preferential agreements with third countries in accordance with Article V of the GATS provided such agreements do not impede or frustrate the objectives of these Regulations. Extension of any preference granted under these new agreements may be extended to a Member State on a reciprocal basis.
4. Nothing in these Regulations shall prevent a Member State from maintaining any preferential agreement entered with a third country prior to the coming into force of these Regulations and any preference granted under these existing agreements may be extended to a Member State on a reciprocal basis;
5. A Member State may maintain a measure which is inconsistent with paragraph 1, provided it is listed in the MFN exemptions list. The agreed list of MFN exemption shall be annexed to these Regulations.
6. Where a Member State intends to enter into an agreement of the type referred to in paragraph 3 and it shall, prior to negotiating such agreement duly inform other Member States of the intention to do so. Where the Member State concludes such an agreement, it shall afford adequate opportunity to the other Member States to negotiate the benefits granted therein.

Article 7

Most Favoured Nation Exemptions

1. A Member State may maintain a measure inconsistent with Article 6 provided that such a measure and the conditions that necessitated that measure are listed in Annex II on MFN Exemptions. The agreed list of exemptions shall be annexed to these Regulations.
2. Any new exemptions applied for after the date of adoption of these Regulations shall be dealt on a case by case basis by the Committee.
3. Exemptions shall not exceed a period of 5 years.
4. The Committee shall periodically review all exemptions. The first review shall take place no more than 2 years after the adoption of these Regulations.
5. The Committee in a review shall:
 - (a) Examine whether the conditions which created the need for the exemption still prevail and make such recommendations as it may deem appropriate; and
 - (b) Determine the date of any further review.
6. The exemption of a Member State from its obligations under paragraph 1 of Article 6 of these Regulations with respect to a particular measure terminates on the date provided for in the exemption.
7. A Member State shall notify the Committee at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article 6 of these Regulations.

Article 8

Transparency

1. Each Member State shall ensure that its laws, regulations, procedures and administrative rulings of general application relating to any trade matter covered by these Regulations are promptly published or made publicly available. Relevant international agreements which a Member State enters into should also be published.

2. The information referred to under this Article shall be considered to have been provided when the information has been made available by appropriate notification to the Secretary General.
3. On request of the other Member State, and under its domestic laws, each Member State shall provide information and reply to any question from the other Member State relating to an actual or proposed measure that might substantially affect the operation of these Regulations.
4. The Member States agree to cooperate in bilateral and multilateral fora on ways to increase transparency in trade in services matters.

Article 9

Disclosure of Confidential Information and Data

Nothing in these Regulations shall require any Member to disclose confidential information and data the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article 10

Variable Geometry

1. Nothing in these Regulations shall be construed as preventing two or more member States from undertaking faster liberalisation of their commitments under these Regulations.
2. Any benefit under the enhanced liberalisation may be extended to any other party to the Regulations on a reciprocal basis.

Article 11

Least Developed Countries

Member States agree that special consideration should be given to least developed countries of the Common Market in the service sector. In this regard member States undertake to:

- i. Give a special consideration to the liberalization of service sectors and modes of supply of export interest to LDCs;
- ii. Allow LDC member States longer phase down periods for liberalisation and to make fewer commitments;

- iii. To give special consideration to the needs of LDCs in regional support programmes.

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Article 12

Level of Commitments in implementation

1. The liberalization process shall be concluded by the Committee and according to negotiating modalities to be established by Member States taking into account the different levels of development among the Member States and Special and Differential Treatment may be granted based on the level of commitments that will be submitted at a later stage of negotiations.

2. The Liberalisation process under paragraph 1, shall be conducted with the aim of promoting the economic growth and development of the Member States, in conformity with the principle of asymmetry. Special flexibility to such Member States may *inter alia* take the form of (a) a transition period for liberalization; and (b) opening fewer sectors or types of transactions.

Article 13

Co-operation and Development

1. Member States shall aim to promote an attractive and stable environment for the supply of services. Such promotion should *inter alia*, take the form of:

- a) mechanisms for information on, identification and dissemination of business opportunities;
- b) development of legal framework favourable to trade and investment in services;
- c) development of model laws, regulations and uniform and simplified administrative procedures;
- d) development of mechanisms of joint investments, in particular with small and medium-sized enterprises of the Member States; and
- e) agreement on the need to cooperate in the development of services in economic areas that can accelerate economic development.

2. No later than five years following the adoption of these Regulations, the Committee shall establish the necessary steps for the establishment of such mechanisms and regulatory frameworks.

3. Member States recognize the importance of cooperative mechanisms, technical assistance and capacity building, which should be ongoing before and after the adoption of the Regulations.

4. Member States shall enhance such cooperation, *inter alia*, in accordance with mechanisms and initiatives carried out under other COMESA Regulations and Agreements, such as the COMESA Common Investment Area.

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Article 14

Domestic Regulation

1. Taking into consideration the provisions of Article VI of GATS, in sectors where specific commitments are undertaken, each Member State shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner for which purpose:

- (a) Each Member State shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member State shall ensure that the procedures in fact provide for an objective and impartial review; and
- (b) The provisions of sub-paragraph (a) would not be construed to require a Member State to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

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

3. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Member States shall, through the Committee on Trade in Services, develop specific, precise and predictable disciplines, while at the same time preserving the right to regulate.

4. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

- (a) Based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) Not more burdensome than necessary to ensure the quality of the service; and

- (c) In the case of licensing procedures, not in themselves a restriction on the supply of the service.
5. These disciplines shall recognise the need of:
- (a) ensuring adequate regulatory flexibility for member States in particular least developed countries for pursuing development objectives;
 - (b) ensuring that possible future disciplines promote member States' export capacities and opportunities; and
 - (c) providing technical assistance and capacity building to facilitate the implementation of the disciplines.
6. In sectors in which a Member State has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member State shall not apply licensing and qualification requirements and technical standards that nullify or impair such removal of restrictions in a manner which:
- (a) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and
 - (b) could not reasonably have been expected of that Member State at the time where specific commitments in those sectors were made.
7. In determining whether a Member is in conformity with the obligation under paragraph 6(a), account shall be taken of international standards of relevant international organisations¹ applied by that Member.
8. In Sectors where specific commitments regarding professional services are undertaken, Member States shall provide for adequate procedures to verify the competence of professionals whose supply shall be regulated by provisions of Article 15 on Mutual Recognition supported by the relevant Annexes to be determined.

Article 15

Mutual Recognition

¹ The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the Agreement

1. Each Member State shall recognize the educational qualifications, experience obtained and competence gained, in another Member State for the purpose of licensing or certification of service suppliers upon their adoption pursuant to the provisions of this Article. In this regard:

- a) Member States shall encourage the relevant professional bodies and Qualification Authorities or regulators in their respective territories to jointly develop and provide recommendations on mutual recognition for the purpose of the fulfilment in whole or in part by service suppliers of the criteria applied by each body for the authorization, licensing, operation, and certification of service suppliers and in particular professional services.
 - b) The Committee on Trade in Services (CTS) will establish a mechanism to work on the basis of the above recommendations with a view to preparing them for adoption by the Council.
 - c) Upon the Council decision, Member States shall accordingly mutually recognise each other's qualifications;
2. Professional bodies and Qualification Authorities or regulators shall establish criteria and make recommendations for mutual recognition within a period of 3 years of the adoption by Council of these Regulations.
3. With a view to harmonization, recognition should be as far as possible based on internationally agreed criteria. Work shall be undertaken in cooperation with relevant intergovernmental and non-governmental organisations.
4. Where a Member State accords recognition autonomously, it shall afford adequate opportunity for any other Member State to demonstrate that education, experience, licenses, certifications obtained, requirements met, or granted in that other Member state should be recognised.
5. Member States agree to cooperate with a view to ensuring adequate capacity building and technical assistance for the attainment of the provisions of this Article.

Article 16

Monopolies and Exclusive Service Suppliers

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

2. Where a Member State'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 Member State's specific commitments, the Member State shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. The Committee on Trade in Services may, at the request of a Member State which has a reason to believe that a monopoly supplier of a service of any other Member State is acting in a manner inconsistent with paragraph 1 or 2, request the Member State establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.
4. If, after the date of adoption of these Regulations, a Member State grants monopoly rights regarding the supply of a service covered by its specific commitments, that Member State shall notify the Committee on Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article 25 shall apply.
5. The provisions of this Article shall also apply to cases of exclusive service suppliers where a Member State, formally or in effect:
 - (a) Authorises or establishes a small number of service suppliers; and
 - (b) Substantially prevents competition among those suppliers in its territory.

Article 17

Anti-Competitive Business Practices

1. Member States recognize that certain business practices of service suppliers, other than those falling under Article 16, may restrain competition and thereby restrict trade in services.
2. In line with the provisions of the COMESA Competition Regulations each Member State shall, at the request of any other Member State, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member State addressed shall respond to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member State addressed shall also provide other information available to the requesting Member State, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member State.

Article 18

Payments and Transfers

1. Except under the circumstances envisaged in Article 19, a Member State shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.
2. Nothing in these Regulations 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 State shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 19 or at the request of the Fund.

Article 19

Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member State may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Member State in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1:
 - (a) Shall not discriminate among Member States;
 - (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 State;
 - (d) Shall not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (e) Shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Members may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the Secretariat.
5. Member States applying the provisions of this Article shall consult promptly with the Committee on restrictions adopted under this Article.
6. The Committee shall establish procedures for periodic consultations with the objective of enabling such recommendations to be made to the Member State concerned as it may deem appropriate.
7. Such consultations shall assess the balance-of-payment situation of the Member State concerned and the restrictions adopted or maintained under this Article, taking into account, inter alia, such factors as:
 - (a) The nature and extent of the balance-of-payments and the external financial difficulties;
 - (b) The external economic and trading environment of the consulting Member State; and
 - (c) Alternative corrective measures which may be available.
8. The consultations shall address the compliance of any restrictions with paragraph 2 of this Article, in particular the progressive phase-out of restrictions in accordance with paragraph 2(e) of this Article.
9. In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Member State.
10. If a Member State which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Committee on Monetary Affairs shall establish a review procedure and any other procedures necessary.

Article 20

Government Procurement

1. Procurement by Government agencies of services purchased for Government purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale are not covered by these Regulations.
2. This shall not preclude the Member States from considering and adopting under a separate arrangement on the liberalization of Government procurement.

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Article 21

General Exceptions

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

- (a) Necessary to protect public morals or to maintain public order;
- (b) Necessary to protect human, animal or plant life or health;
- (c) Necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of these Regulations including those relating to:
 - (i) The prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) The protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) Safety; or
- (d) Inconsistent with Article 27, on National Treatment, provided that the difference in treatment is aimed at ensuring the equitable or effective² imposition or collection of direct taxes in respect of services or service suppliers of other Member States.
- (e) Inconsistent with Article 6, provided that the difference in treatment is the result of an agreement on avoidance of double taxation or

² Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

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

provisions on the avoidance of double taxation in any other international agreement or arrangement in which the Member is bound.

Article 22

Security Exceptions

1. Nothing in these Regulations shall be construed:
 - (a) To require any Member State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) To prevent any Member State from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) Relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) Relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) Taken in time of war or other emergency in international relations; or
 - (c) To prevent any Member State from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. The Committee shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

PROGRESSIVE LIBERALISATION

Article 23

Negotiation of Specific Commitments

1. In pursuance of the objectives of these Regulations, Members shall enter into successive every five years, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of

providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.

3. For each round, negotiating guidelines and procedures shall be established by the Committee.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Member States under these Regulations.

Article 24

Schedules of Specific Commitments

1. Each Member State shall set out in a schedule the specific commitments it undertakes under Article 26 of these Regulations. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

- (a) Terms, limitations and conditions on market access;
- (b) Conditions and qualifications on national treatment;
- (c) Undertakings relating to additional commitments;
- (d) Where appropriate the time-frame for implementation of such commitments; and
- (e) The date of entry into force of such commitments.

2. Measures inconsistent with both Articles 26 and 27 shall be inscribed in the column relating to Article 26. In this case the inscription will be considered to provide a condition or qualification to Article 27 as well.

3. Schedules of specific commitments shall be annexed to these Regulations and shall form an integral part thereof.

Article 25

Modification of Schedules of Commitments

1. A Member State may modify or withdraw any commitment to remove restrictions in its schedule of specific commitments, at any time after three years from the date on which that commitment entered into force in accordance with this Article:
 - (a) A modifying Member State shall notify to the Committee its intent to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and
 - (b) That it enters into negotiations with an affected Member State to agree to necessary compensatory adjustment.
2.
 - (a) At the request of any Member State the benefits of which under this Agreement may be affected (referred to in this Article as an "affected Member State") by a proposed modification or withdrawal notified under sub-paragraph 1(a), the modifying Member State shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Member States concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.
 - (b) Compensatory adjustments shall be made on a most-favoured-nation basis.
3.
 - (a) If agreement is not reached between the modifying Member State and any affected Member State before the end of the period provided for negotiations, such affected Member State may refer the matter to arbitration in the COMESA Court of Justice. Any affected Member State that wishes to enforce a right that it may have to compensation must participate in the arbitration.
 - (b) If no affected Member State has requested arbitration, the modifying Member State shall be free to implement the proposed modification or withdrawal.
4.
 - (a) The modifying Member State may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

- (b) If the modifying Member State implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member State that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding the Article on MFN in these Regulations, such a modification or withdrawal may be implemented solely with respect to the modifying Member State.

5. The Committee shall establish procedures for rectification or modification of Schedules. Any Member State which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

Article 26

Market Access

1. With respect to market access through the modes of supply identified in Article 5, each Member State shall accord to service suppliers of other Member States treatment no less favourable than that provided for in the specific commitments contained in the schedule of commitments in Annex III.

2. In sectors where market access commitments are undertaken, the measures which a Member State shall not maintain or adopt, unless otherwise specified in Annex III on Schedule of Commitments are defined as:

- (a) Limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive rights or other service suppliers' requirements such as economic needs tests;
- (b) Limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) Limitations on the total number of service operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
- (d) Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;
- (e) Measures which restrict or require specific types of establishment (subsidiary, branch, representative office)³ or joint ventures through

³ Each Party may require that in the case of incorporation under its own law, investors must adopt a specific legal form. To the extent that such requirement is applied in a non-

which an investor of the other Member State may supply a service;
and

- (f) Limitations on the total number of natural persons that may be employed in a particular services sector or that a service supplier may employ and who are necessary for and directly related to the supply of a specific service in the form of a numerical quota or an economic needs test (ENT).

Article 27

National Treatment

1. In the sectors inscribed in Annex III on the specific commitments in its schedule, and subject to any conditions and qualifications set out therein, with respect to all measures affecting the supply of services, each Member State shall accord to services and services suppliers of any other Member State treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Member State may meet the requirement of paragraph 1 by according to services and services suppliers of the other Member States, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services and service suppliers of the Member State compared to like services and services suppliers of the other Member States.

Article 28

These Regulations considers the issue of temporary movement of natural persons in Annex I.

DISPUTE SETTLEMENT

Article 29

Dispute Settlement Arrangements

1. A Member State may request consultations with another Member State regarding any matter arising under these Regulations. The other Member State

discriminatory manner, it does not need to be specified in Annex IV (lists of commitments on establishment) in order to be maintained or adopted by the Parties.

shall give sympathetic consideration to the request. The Secretary General may on the request of the Member States concerned facilitate the consultations to be completed within a period of 60 days after receiving the request.-

As adopted by Council

2. If any Member State is not satisfied with the results of the consultations, the Member State aggrieved may refer the matter to the Committee on Trade in Services. If the Committee does not resolve the matter satisfactorily within 60 days of receiving the matter, the aggrieved Member State may take the matter to the COMESA Court of Justice.

3. If any Member State is not satisfied with the decision of the Committee, the Member State aggrieved may, within 90 days, refer such matter to the COMESA Court of Justice for determination.

INSTITUTIONAL FRAMEWORK

Article 30

Committee on Trade in Services

1. In line with the provisions of the Article 15 of the COMESA Treaty the Committee on Trade in Services is hereby established, which shall monitor and review the implementation of these Regulations.

2. The Committee shall also consider proposals and recommendations from the Member States for the improvement of these Regulations and make appropriate recommendations to Council and carry out any other functions as assigned to it by or under these Regulations or the Treaty.

ADMINISTRATIVE SIMPLIFICATION

Article 31

Simplification of Procedures

1. Member States shall examine the procedures and formalities applicable to access to a service activity and to the exercise thereof. Where procedures and formalities examined under this paragraph are not sufficiently simple to ensure commitments made under Article 8, Member States shall simplify them.

2. Where Member States require a service supplier to supply a certificate, attestation or any other document proving that a requirement has been satisfied, they shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. They may require a document from another Member State to be produced in its original form, or as a certified copy or as a certified translation.

Article 32

Enquiry Points

An Enquiry Point shall provide preliminary information, to the extent possible, to any service supplier on the following together with detailed contacts of the competent authority for the respective services sectors:

- a) All laws regulations and declarations that regulate or relate to service activities which state relevant information regarding procedures, formalities, authorisations, registrations, and any other requirements needed to provide services in the market;
- b) The contact details of the competent authorities enabling the competent authorities to be contacted directly, including the details of those authorities responsible for matters concerning the exercise of service activities;
- c) The means of, and conditions for, accessing public registers and databases on service suppliers and services;
- d) The means of redress which are generally available in the event of dispute between the competent authorities and the provider or the recipient, or between a provider and a recipient or between providers; and
- e) The contact details of the associations or organisations, other than the competent authorities, from which service suppliers or recipients may obtain practical assistance.

Article 33

Procedures by electronic means

1. Member States shall endeavour to ensure that all procedures and formalities relating to access to a service activity and to the exercise thereof may be easily completed, at a distance and by electronic means, through the relevant enquiry point and with the relevant competent authorities. Where the electronic means are not available such procedures and formalities may be provided by other appropriate means.

2. Paragraph 1 shall not apply to the inspection of premises on which the service is supplied or of equipment used by the supplier or to physical examination of the capability or of the personal integrity of the supplier or of his responsible staff.

FINAL PROVISIONS

Article 34

Entry into Force

These Regulations shall enter into force when adopted by the Council.

Article 35

Review

1. The Committee shall review these Regulations three years after the entry into force of these Regulations, with a view to further deepening liberalisation and reducing or eliminating remaining restrictions on a mutually advantageous basis and ensuring an overall balance of rights and obligations.

2. The Committee shall examine the operation of these Regulations every three years after the review undertaken under paragraph 1 and shall submit appropriate proposals to Council.

Article 36

Future Development

1. The Member States may mutually agree to extend these Regulations with the aim of broadening and supplementing the scope of the Regulations in accordance with the Member States' respective legislation, by concluding agreements on specific sectors or activities in the light of the experience gained during the implementation of the Regulations.

2. As regards the implementation of these Regulations, the Committee may make suggestions oriented towards expanding cooperation in all areas, taking into account the experience acquired during the implementation thereof.

Article 37

Other Agreements

1. These Regulations or any action taken under it shall not affect the rights and obligations of the Member States under any existing agreements to which they are Parties to.

2. Nothing in these Regulations shall affect the rights of the Member States to enter into other agreements not contrary to the principles, objectives and terms of these Regulations. Such Agreements shall be notified to the Secretary General. The Secretary General shall circulate such notification to all Member States within 15 days.

3. Existing agreements are not affected as these have been notified to the MFN exemption list of the GATS and other bilateral agreements on services that must be notified within twelve months of adoption by Council of these agreements.

Article 38

Amendments

1. The provisions of these Regulations may be amended through the consent of all parties to these Regulations and such amendments shall become effective upon adoption by the Council.

2. Any Member State may submit proposals for the amendment of these Regulations. Any proposals for the amendment of these Regulations shall be submitted to the Secretary General in writing, who shall, within 30 days of receipt, communicate it to Member States. The Member States which wish to comment on the proposal shall do so within 90 days from the date of the dispatch of the proposal by the Secretary General. After the expiry of this period the Secretary General shall submit the proposals and any comments thereon received from the Member States to Council through the Committee.

Article 39

Annexes and Appendices,

The Annexes and Appendices to these Regulations are an integral part hereof.

ANNEX I

TEMPORARY MOVEMENT OF NATURAL PERSONS

1. The Regulations apply to measures affecting natural persons who are service suppliers of a Member State, and natural persons of a Member State who are employed by a service supplier of a Member State, in respect of supply of a service.
2. The Regulations shall not apply to measures affecting natural persons seeking access to the employment market of a Member State, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. Member States shall negotiate specific commitments applying to the movement of natural persons supplying services.
4. A Member State may apply measures to regulate the entry of natural persons into, or their temporary stay, in its territory, including those measures necessary to protect the integrity of, and ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member State under the terms of specific commitments⁴.

Definitions

1. For the purpose of this Annex
 - (a) **“Independent Professionals”** means natural persons who enter the territory of another Member State temporarily in order to perform a service pursuant to a contract (s) between them and any services consumer(s) located in the territory of the other Member State having the following the broad characteristics:
 - (i) The natural person supplies the service as a self-employed person;
 - (ii) The natural person has obtained a service contract in the territory of the Member where the service is to be provided;

⁴ The sole fact of requiring a visa for natural persons of certain Member States and not those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

- (iii) The natural person possesses appropriate educational and professional qualifications relevant to the service to be supplied; and
 - (iv) The remuneration for the contract is to be paid solely to the natural person.
- (b) **“Contractual Services Suppliers”** means foreign natural persons supplying the service in the territory of the Member State concerned on the basis of a contract that provides the primary justification for granting access. These are natural persons either self-employed or employees of a foreign based company/partnership/firm who enter the territory of another Member State temporarily pursuant to a contract(s) with their employers and a service consumer(s) in the territory of the other Member having the following broad characteristics:
 - (i) Restricted to self-employed persons or employees of foreign based enterprises with no commercial presence in the territory of another Member State;
 - (ii) The self employed person or employees of foreign based enterprise that has obtained a service contract for a service to be supplied in the territory of another Member State;
 - (iii) The employees of such service suppliers or employees of foreign based enterprises receive their remuneration directly from the consumer(s) or from their employer while abroad;
 - (iv) The employees of such service suppliers or employees of foreign based enterprise do not engage in other employment in the territory of the Member State where the service is to be supplied;
 - (v) The employees of such service suppliers or employees of foreign based enterprise natural persons have appropriate educational and other qualifications and demonstrated experience relevant to the service to be supplied; and
 - (vi) The employees of such service suppliers or employees of foreign based enterprise natural persons can provide this service contract on a seasonal basis.
- (c) **“Business Visitors”** means individual service suppliers or representatives of a foreign based services supplier who enter the territory of another Member State temporarily for the marketing of

services, to negotiate or conclude agreements for the sale of a service or for the purpose of setting up a commercial presence of that juridical person in the territory of another Member State. This could include either of three sub-categories of:

- (i) Service sellers;
- (ii) Persons responsible for setting up a commercial presence;
or
- (iii) a combination of (i) and (ii) sub-categories into one;

Having the following broad characteristics:

- (i) Individual services suppliers or representatives of such service suppliers will not be engaged in making direct sales to the general public or in supplying services themselves;
- (ii) Refers only to individual services suppliers or representatives of a juridical person not already having commercial presence in the territory of the other Member State; and
- (iii) Such individual services suppliers or representatives will not receive any remuneration from a source located within the territory of the other Member State.

Specific definitions of Business Visitors are as follows:

(a) **“Service sellers”:**

- (i) Enter to market services or negotiate or conclude agreements on the sale of services; and
- (ii) Carry out similar activities, including attending business meetings and, holding and presenting at sales fairs, exhibitions and conferences.

(b) **“Persons responsible for setting up a commercial presence”**

- (i) natural persons responsible for setting up commercial presence of service supplier for which they are legal representatives, or as representatives of a juridical person;
- (ii) The service supplier has no commercial presence in that Member State; and

- (iii) Natural persons who either have been contracted by or are employees of the service supplier.

- (c) **“Intra-corporate transferees”** means natural persons who have been employed by a juridical person or have been partners in it (other than as majority shareholders) for at least one year and who are temporarily transferred to an establishment in the territory of the other Member State. The natural person concerned must belong to one of the following categories:

Managers: Persons working in a senior position within a juridical person, who primarily directs the management of the establishment, receiving general supervision or direction principally from the board of directors of stockholders of the business or their equivalent, include:

- (i) Directing the establishment or a department or sub-division thereof;
- (ii) Supervising and controlling the work of other supervisory, professional or managerial employees; and
- (iii) Having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions.

Specialists: Persons working within a juridical person who possesses uncommon knowledge essential to the establishment's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

2. In terms of market access:

- (i) **Quantitative restrictions** should be:
 - substantially reduced to half by 2012 for independent professionals;
 - eliminated by 2015 for contractual service suppliers;
 - substantially reduced for intra-corporate transferees;

(ii) **Economic Needs Tests (ENTs)** should be:

- Removed or substantially reduced for independent professionals and intra-corporate transferees;
- Eliminated by 2015 for contractual service suppliers;

Where they are not removed, ENTs should be applied on an MFN basis. The following further details concerning the ENTs should be mentioned:

- The services sectors and occupations to which the ENT shall be applied;
- The definition, criteria and conditions to be used in applying the ENT;
- The timeframe for phase out of the application of the ENT;

(iii) The Natural persons can perform services related only to the service activity which is the subject of the contract.

As adopted by Council