

EU proposal

Without prejudice

This document contains an EU proposal for an Investment and Trade in Services Title in the Trade Part of a possible modernised EU-Chile Association Agreement. It has been tabled for discussion with Chile. The actual text in the final agreement will be a result of negotiations between the EU and Chile. The EU reserves the right to make subsequent modifications to this proposal.

EU-Chile Free Trade Agreement

EU TEXTUAL PROPOSAL

INVESTMENT AND TRADE IN SERVICES TITLE

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CHAPTER I

GENERAL PROVISIONS

Article 1.1

Objectives

1. The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between them, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services and investment, and for a high level of protection of investment.
2. The Parties affirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, environment or public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.

Article 1.2

Coverage

1. This Title applies to measures adopted or maintained by:
 - (a) governments and authorities at all levels;
 - (b) non-governmental bodies in the exercise of powers delegated by governments or authorities at all levels; and
 - (c) any entity which is in fact acting on the instructions of or under the direction or the control of a Party with regard to the measure.
2. This Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Nothing in this Agreement shall prevent a Party from applying 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 to 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 benefits¹ accruing to any Party under the terms of a specific commitment in this Title and its Annexes.

¹ The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

Article 1.3

Definitions

1. For purposes of this Title:

- (a) a “natural person of the EU” means a national of one of the Member States of the European Union according to its legislation² and a “natural person of Chile” means a national of Chile according to its legislation;
- (b) a “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (c) a “juridical person of the EU” or a “juridical person of Chile” means a juridical person set up in accordance with the laws of a Member State of the European Union or of Chile and engaged in substantive business operations³ in the territory of the EU or of Chile, respectively;

Notwithstanding the paragraph (c) of this Article, shipping companies established outside the European Union or Chile and controlled by nationals of a Member State of the European Union or of Chile, respectively, shall also be beneficiaries of the provisions of this Title, with the exception of Chapter II (Investment) Section B (Investment Protection) and of Section C (Resolution of Investment Disputes and Investment Court System), if their vessels are registered in accordance with their respective legislation, in that Member State or in Chile and fly the flag of a Member State or of Chile;

- (d) an “enterprise” means a juridical person, branch or representative office set up through establishment, as defined under this Article;
- (e) “establishment” means the setting up, including the acquisition⁴ of, an enterprise by an investor of one Party in the territory of the other Party;
- (f) “economic activities” means activities of an industrial, commercial or professional character and activities of craftsmen and including the supply of services, except activities performed in the exercise of governmental authority;
- (g) “operation” means the conduct, management, maintenance, use, enjoyment, sale or other disposal of an investment by an investor of one Party, in the territory of the other Party ;

² The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen’s passport.

³ In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU understands that the concept of “effective and continuous link” with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of “substantive business operations”.

⁴ The term “acquisition” shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

- (h) “service” includes any service in any sector but not services supplied in the exercise of governmental authority;
- (i) “activities performed in the exercise of governmental authority” means activities performed neither on a commercial basis nor in competition with one or more economic operators;
- (j) “cross-border supply of services” means the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party
 - (ii) in the territory of a Party to the service consumer of the other Party;
- (k) a “service supplier” of a Party means any natural or juridical person of a Party that seeks to supply or supplies a service;
- (l) a “measure” includes any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement, practice or any other form⁵;
- (m) an “investor” means a natural person or a juridical person of a Party that seeks to make, is making, or has already made an investment in the territory of the other Party.
- (n) “covered investment” means an investment which is owned, directly or indirectly, or controlled, directly or indirectly, by investors of one Party in the territory of the other Party, made in accordance with applicable laws, whether made before or after the entry into force of this Agreement.
- (o) “investment” means every kind of asset, which has the characteristics of an investment, which includes a certain duration and other characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:
 - a) an enterprise;
 - b) shares, stocks and other forms of equity participation in an enterprise;
 - c) bonds, debentures, loans and other debt instruments of an enterprise;
 - d) interests arising from:
 - i) concessions conferred pursuant to domestic law or under a contract, including to search for, cultivate, extract or exploit natural resources,
 - ii) turnkey, construction, production, or revenue-sharing contracts, or other similar contracts;
 - e) intellectual property rights;
 - f) claims to money or claims to performance under a contract;

⁵ For greater certainty, “measure” includes failures to act.

- g) reinvested returns;
- h) any other moveable or immovable, tangible or intangible property, and related rights.

Any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments, provided that the form taken by any investment or reinvestment maintains its compliance with the definition of investment.

For greater certainty:

- (a) “claims to money” does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or an enterprise in the territory of a Party to a natural person or an enterprise in the territory of the other Party, domestic financing of such contracts, or any related order, judgment, or arbitral award; and
- (b) an order or judgment entered in a judicial or administrative action shall not constitute in itself an investment.
- (p) “freely convertible currency” means a currency which is widely traded in international foreign exchange markets and widely used in international transactions.
- (q) “returns” means all amounts yielded by or derived from an investment or reinvestment, including profits, dividends, capital gains, royalties, interest, payments in connection with intellectual property rights, payments in kind and all other lawful income.
- (r) “aircraft repair and maintenance services during which an aircraft is withdrawn from service” mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.
- (s) “selling and marketing of air transport services” mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.
- (t) “computer reservation system (CRS) services” mean services provided by computerised systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.
- (u) “ground handling services” mean the supply at an airport of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling;

fuelling of an aircraft, aircraft servicing and cleaning; surface transport; flight operation, crew administration and flight planning.

Ground handling services do not include security, aircraft repair and maintenance, or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distribution systems, baggage handling systems, and fixed intra-airport transport systems

- (v) “airport operation services” mean the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services.

CHAPTER II

INVESTMENT

SECTION A

LIBERALISATION OF INVESTMENTS

Article 2.1

Scope

1. This Section applies to measures adopted or maintained by a Party affecting the establishment of an enterprise or the operation of an investment in all economic activities by an investor of the other Party in its territory.
2. The provisions of this Section shall not apply to:
 - (a) audio-visual services;
 - (b) national maritime cabotage⁶; and
 - (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) groundhandling services;
 - (v) airport operation services;
3. Government procurement is subject to the provisions of Chapter [YY (on Public Procurement)]. Articles 2.2 [Market Access], 2.3 [National Treatment], 2.4 [Most-Favoured Nation Treatment], and Article 2.6 [Performance Requirements] shall not apply to government procurement.

⁶ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in [...] or a Member State of the European Union and another port or point located in [...] or that same Member State of the European Union, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in [...] or a Member State of the European Union.

4. Subsidies are subject to the provisions of Chapter [YY (on Competition and Subsidies)]. Articles 2.2 [Market Access], 2.3 [National Treatment] and 2.4 [Most-Favoured Nation Treatment] shall not apply to subsidies granted by the Parties.

Article 2.2

Market Access

1. In the sectors or subsectors where market access commitments are undertaken, neither Party shall adopt or maintain, with respect to market access through establishment or operation by investors of the other Party or by enterprises constituting covered investments, either on the basis of its entire territory or on the basis of a territorial sub-division, a measure that:
 - (a) limits the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirements of an economic needs test;
 - (b) limits the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limits the total number of 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;⁷
 - (d) limits 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) restricts or requires specific types of legal entity or joint venture through which an investor of the other Party may carry out an economic activity;
 - (f) limits the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

Article 2.3

National Treatment

1. Each Party shall accord to investors of the other Party and to their covered investments with respect to their establishment in its territory, treatment no less favourable than the treatment it accords, in like situations, to its own investors and to their enterprises.

⁷ Subparagraphs 2 (a), (b), and (c) do not cover measures taken in order to limit the production of an agricultural or fishery product.

2. Each Party shall accord to investors of the other Party and to covered investments, with respect to their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to its own investors and to their investments.
3. The treatment accorded by a Party under §1 and 2 means, with respect to a government of or in a Member State of the EU, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors of the EU in its territory and to investments of such investors.

Article 2.4

Most Favoured Nation Treatment

1. *[The EU reserves the right to propose text extending most favoured nation treatment to the establishment stage.]*
2. Each Party shall accord to investors of the other Party and to covered investments, with respect to their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors and investments of any non-Party.
3. Paragraphs 1 and 2 shall not be construed to oblige a Party to extend to the investors of the other Party the benefit of any treatment resulting from:
 - (a) treatment granted as part of a process of economic integration, which includes commitments to abolish substantially all barriers to investment among the parties to such a process, together with the approximation of legislation of the parties on a broad range of matters within the purview of this Agreement.
 - (b) *[reference to double taxation agreements in case not covered by horizontal provisions in the Agreement]*
 - (c) measures providing for recognition, including of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures.
4. For greater certainty the “treatment” referred to in paragraphs 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international investment treaties and other trade agreements. The substantive provisions in other international investment or trade agreements do not in themselves constitute “treatment” as referred to in paragraphs 1 and 2, and thus cannot give rise to a breach of this Article. Measures applied pursuant to such provisions may constitute "treatment" under this Article.

Article 2.6

Performance Requirements

1. Neither Party may, in connection with the establishment of any enterprise or the operation of any investment in its territory, impose or enforce any requirement, or enforce any commitment or undertaking to:
 - (a) export a given level or percentage of goods or services;
 - (b) achieve a given level or percentage of domestic content;
 - (c) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;
 - (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
 - (e) restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
 - (f) provide access to or transfer technology, a production process or other proprietary knowledge to a natural person or an enterprise in its territory;
 - (g) supply exclusively from the territory of the Party a good produced or a service provided by the investment to a specific regional or world market;
 - (h) locate the headquarters of that investor for a specific region or the world market in its territory;
 - (i) hire a given number or percentage of its nationals;
 - (j) achieve a given level or value of research and development in its territory;
 - (k) restrict the exportation or sale for export;
 - (l) to adopt:-
 - (i) a given rate or amount of royalty below a certain level under a licence contract;
or
 - (ii) a given duration of the term of a licence contract,

in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or any future licence contract²⁵ freely entered into between the investor and a natural or juridical person or any other entity in its territory, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes a direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. For greater certainty, paragraph (l) does not apply when the licence contract is concluded between the investor and a Party.

[NOTE: The EU reserves the right to propose additional performance requirements to be included in the list.]

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment of an enterprise or the operation of an investment in its territory, on compliance with any of the following requirements:
 - (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;
 - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
 - (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings; or
 - (e) to restrict the exportation or sale for export.
3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with investments in its territory, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.
4. Subparagraph 1 (f) does not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be a violation of the Party's competition laws.
5. The provisions of:
 - (a) Subparagraphs 1 (a), (b) and (c), and 2 (a) and (b) do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes;
 - (b) Subparagraphs 2 (a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
6. A Party shall neither impose nor enforce any measure inconsistent with its obligations under the WTO Agreement, even where such measure has been scheduled by that Party in Annex [...] (lists of commitments on liberalisation of investments of both Parties).

Article 2-7
Reservations and Exceptions

1. Articles X paragraph 1 (National Treatment), X (Most Favoured Nation Treatment), X (Performance Requirements), do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at the level of:
 - (i) the European Union, as set out in its Annex I;
 - (ii) a national government, as set out by that Party in its Annex I;
 - (iii) regional government, as set out by that Party in its Annex I; or
 - (iv) a local government;
 - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - (c) an amendment to any non-conforming measure referred to in subparagraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X (National Treatment), X (Most Favoured Nation Treatment) or X (Performance Requirements).
2. Articles X paragraph 1 (National Treatment), X (Most Favoured Nation Treatment), X (Performance Requirements), do not apply to measures that a Party adopts or maintains with respect to sectors, subsectors, or activities as set out in its Annex II.
3. Notwithstanding paragraph 2 of Article X (National Treatment), a Party may adopt or maintain a non-conforming measure affecting the operation of an enterprise that is consistent with its Annex I or Annex II, where such measure is:
 - (a) a non-conforming measure that is adopted before the entry into force of this Agreement;
 - (b) a non-conforming measure referred to in sub-paragraph (a) that is being continued, renewed or amended after the entry into force of this Agreement, provided the measure is no less consistent with paragraph 2 of Article X after being continued, renewed or amended than the measure as it existed prior to its continuation, renewal or amendment; or
 - (c) a non-conforming measure covered under its Annex II that is adopted after the entry into force of this agreement and does not fall within sub-paragraph (a) or (b), provided it is not applied in respect of, or in a way that causes loss or damage to, investments made in the territory of the Party before the entry into force of such measure.
4. Article X (Market Access) does not apply to any non-conforming measure that a Party adopts or maintains with respect to committed sectors or subsectors as set out in its Annex III.

SECTION B

INVESTMENT PROTECTION

Article 2.8

Scope

This Section applies to:

- (a) covered investments;
- (b) investors of a Party in respect of a covered investment with respect to any measure adopted or maintained by a Party affecting the operation of such investment.

Article 2.9

Investment and Regulatory Measures

1. Article 1.1 paragraph 2 of Chapter I of this Title applies to this Section in accordance with the following paragraphs:
2. The provisions of this Section shall not be interpreted as a commitment from a Party that it will not change the legal and regulatory framework, including in a manner that may negatively affect the operation of covered investments or the investor's expectations of profits.
3. For greater certainty and subject to paragraph 4, a Party's decision not to issue, renew or maintain a subsidy
 - (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy; or
 - (b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy,

shall not constitute a breach of the provisions of this Section.

4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy⁸ or requesting its reimbursement, where such action has been ordered by one of its competent authorities listed in [Annex X], or as requiring that Party to compensate the investor therefor.

Article 2.10

⁸ In the case of the EU, "subsidy" includes "state aid" as defined in EU law.

Treatment of Investors and of Covered Investments

1. Each Party shall accord in its territory to covered investments of the other Party, and to investors with respect to their covered investments, fair and equitable treatment and full protection and security, in accordance with paragraphs 2 to 6.
2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes:
 - (a) denial of justice in criminal, civil or administrative proceedings; or
 - (b) fundamental breach of due process, including a fundamental breach of transparency and obstacles to effective access to justice, in judicial and administrative proceedings; or
 - (c) manifest arbitrariness; or
 - (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief; or
 - (e) harassment, coercion, abuse of power or similar bad faith conduct; or
 - (f) a breach of any additional elements of the fair and equitable treatment obligation which have been adopted by the Parties in accordance with paragraph 3 of this Article.
3. The Parties shall, at the request of a Party, review the content of the obligation to provide fair and equitable treatment. The [...] Committee (*reference to Article on Services and Investment Committee*) may develop recommendations in this respect and submit them to the [...] Committee (*reference to Article on Trade Committee*). The [...] Committee (*reference to Article on Trade Committee*) shall consider whether to recommend that the Agreement is amended, in accordance with Article [...] (*relevant procedures for the amendment of the Agreement*).
4. When applying the above fair and equitable treatment obligation, a tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.
5. For greater certainty, “full protection and security” refers to the Party’s obligations relating to physical security of investors and covered investments.
6. For greater certainty, a breach of another provision of this Agreement, or of any other international agreement, does not constitute a breach of this Article.

Article 2.11

Compensation for Losses

1. Investors of a Party whose covered investments suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the other Party shall be accorded by that Party, with respect to restitution, indemnification, compensation or other form of settlement, treatment no less favourable than that accorded by that Party to its own investors or to the investors of any non-Party, whichever is more favourable to the investor.
2. Without prejudice to paragraph 1 of this Article, investors of a Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Party shall be accorded prompt, adequate and effective restitution or compensation by the other Party, if these losses result from:
 - (a) requisitioning of their covered investment or a part thereof by the latter's armed forces or authorities; or
 - (b) destruction of their covered investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of the situation;

The amount of such compensation shall be determined in accordance with the provisions of paragraph 2 of Article 2.12 (Expropriation), from the date of requisitioning or destruction until the date of actual payment.

Article 2.12

Expropriation

1. Neither Party shall nationalise or expropriate a covered investment either directly or indirectly through measures having an effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") except:
 - (a) for a public purpose;
 - (b) under due process of law;
 - (c) in a non-discriminatory manner; and
 - (d) against payment of prompt, adequate and effective compensation.

For greater certainty, this paragraph shall be interpreted in accordance with Annex I (Expropriation).

2. The compensation referred to in paragraph 1 shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. The compensation shall also include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective for the investor, be paid and made transferable, without delay to the country designated by the investor and in the currency of the country of which the investor is a national or in any freely convertible currency accepted by the investor.
4. The investor affected shall have a right, under the law of the expropriating Party, to prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, to the extent that such issuance is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreements (“TRIPS Agreement”).

Article 2.13

Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made in a freely convertible currency, without restriction or delay and at the market rate of exchange prevailing on the date of transfer with regard to the currency to be transferred. Such transfers include:
 - (a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;
 - (b) profits, dividends, capital gains and other returns, proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
 - (c) interest, royalty payments, management fees, and technical assistance and other fees;
 - (d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
 - (e) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment;
 - (f) payments made pursuant to Articles 2.11 (Compensation for Losses) and 2.12 (Expropriation);
 - (g) payments of damages pursuant to an award issued by a tribunal under Section C (Resolution of Investment Disputes and Investment Court System).

2. Neither Party may require its investors to transfer, or penalise its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.
- [3. *Notwithstanding paragraphs 1 and 2, this Article shall not be construed as preventing a Party from applying in an equitable and non-discriminatory manner, and not in a way that would constitute a disguised restriction on trade and investment, its laws relating to:*
- (a) *bankruptcy, insolvency, bank recovery and resolution, or the protection of the rights of creditors, and the prudential supervision of financial institutions;*
 - (b) *issuing, trading, or dealing in financial instruments;*
 - (c) *financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory authorities;*
 - (d) *criminal or penal offenses, deceptive or fraudulent practices;*
 - (e) *ensuring compliance with orders or judgments in judicial or administrative proceedings;*
 - (f) *social security, public retirement or compulsory savings schemes.]*

This text may be included in the Capital Movements Chapter.

Article 2.14

Observance of Written Commitments

Where a Party either itself or through any entity mentioned in Article 1.2 (Coverage) has entered into any contractual written commitment⁹ with investors of the other Party or with their covered investments, that Party shall not, either itself or through any such entity breach the said commitment through the exercise of governmental authority.

Article 2.15

Subrogation

If a Party, or an agency thereof, makes a payment under an indemnity, guarantee or contract of insurance it has entered into in respect of a covered investment made by one of its investors in the territory of the other Party, the other Party shall recognise that the Party or its agency shall be entitled in all circumstances to the same rights under this Section as those of the investor in respect of the covered investment. Such rights may be exercised by the Party or an

⁹ For the purposes of this paragraph, a “contractual written commitment” means an agreement in writing whether in a single instrument or multiple instruments, that creates an exchange of rights and obligations, binding on both Parties.

agency thereof, or by the investor if the Party or an agency thereof so authorises. The investor may not pursue these rights to the extent of the subrogation.

Article 2.16

Denial of Benefits

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

- (a) an investor of a non-Party owns or controls the enterprise; and
- (b) the denying Party adopts or maintains a measure with respect to the non-Party that:
 - (i) is related to the maintenance of international peace and security; and
 - (ii) prohibits transactions with the enterprise or would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

Article 2.17

Termination

In the event that this Agreement is terminated pursuant to Article [X.X] (Duration), this Section and Section C (Resolution of Investment Disputes and Investment Court System) shall continue to be effective for a further period of 20 years from the date of termination, with respect to investments made before the date of termination of the present Agreement. This Article shall not apply in the case where the provisional application of this Agreement is terminated and this Agreement does not enter into force.

Article 2.18

Relationship with Other Agreements

1. Upon the entry into force of this Agreement, the agreements between Member States of the European Union and Chile listed in Annex YY (Agreements between the Member States of the European Union and Chile) including the rights and obligations derived therefrom, shall cease to have effect and shall be replaced and superseded by this Agreement.
2. In the event of the provisional application in accordance with paragraph 4 of Article [X.X] (Entry into Force), including this Chapter, the application of the agreements listed in Annex [YY] (Agreements between the Member States of the European Union and Chile), as well as the rights and obligations derived therefrom, shall be suspended as of the date of provisional application. In the event that the provisional application of this Agreement is terminated and this Agreement does not enter into force, the suspension

shall cease and the agreements listed in Annex [YY] (Agreements between the Member States of the European Union and Chile) shall have effect.

3. Notwithstanding paragraphs 1 and 2, a claim may be submitted pursuant to an agreement listed in Annex Y (Agreements between the Member States of the European Union and Chile), in accordance with the rules and procedures established in that agreement, provided that:
 - (a) the claim arises from an alleged breach of that agreement that took place prior to the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, prior to the date of entry into force of this Agreement; and
 - (b) no more than three years have elapsed from the date of suspension of the agreement pursuant to paragraph 2 or, if the agreement is not suspended pursuant to paragraph 2, from the date of entry into force of this Agreement until the date of submission of the claim.
4. Notwithstanding paragraphs 1 and 2, if the provisional application of this Agreement, including this Chapter, is terminated and this Agreement does not enter into force, a claim may be submitted pursuant to this Agreement, in accordance with the rules and procedures established in this Agreement, provided that:
 - (a) the claim arises from an alleged breach of this Agreement that took place during the period of provisional application of this Agreement; and
 - (b) no more than three years have elapsed from the date of termination of the provisional application until the date of submission of the claim.
5. For the purposes of this Article, the definition of “entry into force of this Agreement” provided for in paragraph 7 of Article [X.X] (Entry into Force) shall not apply.

ANNEX I

EXPROPRIATION

The Parties confirm their shared understanding that:

1. Expropriation may be either direct or indirect:
 - (a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.
 - (b) indirect expropriation occurs where a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.
2. The determination of whether a measure or series of measures by a Party, in a specific situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;
 - (b) the duration of the measure or series of measures by a Party;
 - (c) the character of the measure or series of measures, notably their object and context.
3. For greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures by a Party that are designed and applied to protect legitimate policy objectives, such as the protection of public health, social services, public education, safety, environment or public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity do not constitute indirect expropriations.

ANNEX II

PUBLIC DEBT

1. No claim that a restructuring of debt of a Party breaches an obligation under Section B (Investment Protection) may be submitted to, or if already submitted, be pursued under Section C (Resolution of Investment Disputes and Investment Court System) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission.
2. Notwithstanding Article 2.24 (Submission of a Claim) of Section C (Resolution of Investment Disputes and Investment Court System), and subject to paragraph 1 of this Annex, an investor may not submit a claim under Section C (Resolution of Investment Disputes and Investment Court System) that a restructuring of debt of a Party breaches Articles 2.3 (National Treatment) or 2.4 (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments)¹⁰ or an obligation under Section B (Investment Protection), unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article 2.22 (Consultations) of Sub-Section 1 (Scope and Definitions) of Section C (Resolution of Investment Disputes and Investment Court System).
3. For the purposes of this Annex:
 - (a) “negotiated restructuring” means the restructuring or rescheduling of debt of a Party that has been effected through (i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or (ii) a debt exchange or other similar process in which the holders of no less than 66% of the aggregate principal amount of the outstanding debt subject to restructuring, excluding debt held by that Party or by entities owned or controlled by it, have consented to such debt exchange or other process.
 - (b) “governing law” of a debt instrument means a jurisdiction’s legal and regulatory framework applicable to that debt instrument.
4. For greater certainty, “debt of a Party” includes, in the case of the European Union, debt of a government of a Member State at the central, regional or local level.

¹⁰ For greater certainty, a breach of Article 2.3 (National Treatment) or Article 2.4 (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments) does not occur merely by virtue of a different treatment provided by a Party to certain categories of investors or investments on grounds of a different macroeconomic impact, for instance to avoid systemic risks or spillover effects, or on grounds of eligibility for debt restructuring.

ANNEX III

**COMPETENT AUTHORITIES MENTIONED IN ARTICLE 2.9 PARAGRAPH 4 OF
SECTION B (INVESTMENT PROTECTION)**

In the case of the EU, the competent authorities entitled to order the actions mentioned in Article 2.9 (Investment and Regulatory Measures) paragraph 4 are the European Commission or a court or tribunal of a Member State when applying EU law on state aid.

ANNEX []

**AGREEMENTS BETWEEN MEMBER STATES OF THE EUROPEAN UNION AND
[...]**

SECTION C

RESOLUTION OF INVESTMENT DISPUTES AND INVESTMENT COURT SYSTEM

SUB-SECTION 1

Scope and Definitions

Article 2.19

Scope and Definitions

1. This Section shall apply to a dispute between, on the one hand, a claimant of one Party and, on the other hand, the other Party concerning treatment alleged to breach Article 2.3(2) (National Treatment) or Article 2.4(2) (Most Favoured Nation Treatment) of Section A (Liberalisation of Investments) or Section B (Investment Protection), which breach allegedly causes loss or damage to the claimant or its locally established company.
2. A claim with respect to the restructuring of debt of a Party shall be decided in accordance with Annex II (Public debt) to Section B (Investment Protection).
3. For the purposes of this Section:
 - (a) “proceeding”, unless otherwise specified, means a proceeding before the Tribunal or Appeal Tribunal under this Section;
 - (b) “disputing parties” means the claimant and the respondent;
 - (c) “claimant” means an investor of a Party, as defined in Article 1.3(Definitions) of Chapter I (General Provisions), which seeks to submit or has submitted a claim pursuant to this Section, either
 - (i) acting on its own behalf; or
 - (ii) acting on behalf of a locally established company which it owns or controls. The locally established company shall be treated as a national of another Contracting State for the purposes of Article 25 (2) (b) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID-Convention).
 - (d) “non-disputing Party” means either Chile, when the respondent is the European Union or a Member State of the European Union; or the European Union, when Chile is the respondent.
 - (e) “respondent” means either Chile, or in the case of the European Union, either the European Union or the Member State of the European Union concerned as

determined pursuant to Article 2.23 (Request for Determination of the Respondent).

- (f) “locally established company” means a juridical person established in the territory of one Party, and owned or controlled by an investor of the other Party.¹¹
- (g) “UNCITRAL Transparency Rules” means the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.
- (h) “Third Party funding” means any funding provided by a natural or legal person who is not a party to the dispute but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings in return for a remuneration dependent on the outcome of the dispute or in the form of a donation or grant.

SUB-SECTION 2

Alternative Dispute Resolution and Consultations

Article 2.20

Amicable Resolution

1. Any dispute should, as far as possible, be settled amicably through negotiations or mediation and, where possible, before the submission of a request for consultations pursuant to Article 2.22 (Consultations). Such settlement may be agreed at any time, including after proceedings under this Section have been commenced.
2. A mutually agreed solution between the disputing parties shall be notified to the non-disputing Party within 15 days of the mutually agreed solution being agreed. Each disputing party shall abide by and comply with any mutually agreed solution reached in accordance with this article or with Article 2.21 (Mediation). The [...] Committee shall keep under surveillance the implementation of such mutually agreed solutions and the Party to the mutually agreed solution shall regularly report to the [...] Committee on the implementation of such solution.

Article 2.21

Mediation

1. The disputing parties may at any time agree to have recourse to mediation.

¹¹ A juridical person is: (i) owned by natural or juridical persons of the other Party if more than 50 per cent of the equity interest in it is beneficially owned by natural or juridical persons of that Party; (ii) controlled by natural or juridical persons of the other Party if such natural or juridical persons have the power to name a majority of its directors or otherwise to legally direct its actions.

2. Recourse to mediation is voluntary and without prejudice to the legal position of either disputing party.
3. Recourse to mediation shall be governed by the rules set out in Annex I (Mediation Mechanism for Investor-to-State Disputes). Any time limit mentioned in Annex I (Mediation Mechanism for Investor-to-State Disputes) may be modified by agreement between the disputing parties.
4. The [...] Committee shall, upon the entry into force of this Agreement, establish a list of six individuals, of high moral character and recognised competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment and who are willing and able to serve as mediators.
5. The mediator shall be appointed by agreement of the disputing parties. The disputing parties may jointly request the President of the Tribunal to appoint a mediator from the list established pursuant to this Article, or, in the absence of a list, from individuals proposed by either Party.
6. Once the disputing parties agree to have recourse to mediation, the time-limits set out in Articles 2.22 (3) (Consultations), 2.22 (5) (Consultations), 2.46 (6) (Provisional Award) and 2.47 (5) (Appeal Procedure) shall be extended by the amount of time from the date on which it was agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation, by way of written notice to the mediator and the other disputing party. At the request of both parties, the Tribunal or the Appeal Tribunal shall stay the proceedings.

Article 2.22

Consultations

1. Where a dispute cannot be resolved as provided for under Article 2.20 (Amicable Resolution), a claimant of a Party alleging a breach of the provisions referred to in Article 2.19 (1) (Scope and Definitions) may submit a request for consultations to the other Party.
2. The request shall contain the following information:
 - (a) the name and address of the claimant and, where such request is submitted on behalf of a locally established company, the name, address and place of incorporation of the locally established company;
 - (b) the provisions referred to in Article 2.19 (1) (Scope and Definitions) alleged to have been breached;
 - (c) the legal and factual basis for the claim, including the treatment alleged to be inconsistent with the provisions in Article 2.19 (1) (Scope and Definitions);
 - (d) the relief sought and the estimated amount of damages claimed;

- (e) evidence establishing that the claimant is an investor of the other Party and that it owns or controls the investment and, where it acts on behalf of a locally established company, that it owns or controls the locally established company.

Where a request for consultations is submitted by more than one claimant or on behalf of more than one locally established company, the information in (a) and (e) shall be submitted for each claimant or each locally established company, as the case may be.

3. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the request for consultations.
4. Unless the disputing parties agree otherwise, the place of consultation shall be:
 - (a) Santiago de Chile where the consultations concern treatment afforded by Chile;
 - (b) Brussels where the consultations concern treatment afforded by the European Union; or
 - (c) the capital of the Member State of the European Union concerned, where the consultations concern treatment afforded exclusively by that Member State.

Consultations may also take place by videoconference or other means, particularly where a small or medium sized enterprise is involved.

5. The request for consultations must be submitted:
 - (a) within three years of the date on which the claimant or, as applicable, the locally established company first acquired, or should have first acquired, knowledge of the treatment alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions) and of the loss or damage alleged to have been incurred thereby; or
 - (b) within two years of the date on which the claimant or, as applicable, the locally established company ceases to pursue claims or proceedings before a tribunal or court under the domestic law of a Party; and, in any event, no later than 10 years after the date on which the claimant or, as applicable, its locally established company, first acquired, or should have first acquired knowledge, of the treatment alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions) and of the loss or damage alleged to have been incurred thereby.
6. In the event that the claimant has not submitted a claim pursuant to Article 2.24 (Submission of a Claim) within 18 months of submitting the request for consultations, the claimant shall be deemed to have withdrawn its request for consultations and, where applicable, the notice requesting a determination of the respondent pursuant to Article 2.23 (Request for Determination of the Respondent) and may not submit a claim under this Section. This period may be extended by agreement between the parties involved in the consultations.
7. The time periods in paragraphs 5 and 6 shall not render a claim inadmissible where the claimant can demonstrate that the failure to request consultations or submit a claim is

due to the claimant's inability to act as a result of actions taken by the other Party, provided that the claimant acts as soon as reasonably possible after it is able to act.

8. In the event that the request for consultations concerns an alleged breach of the Agreement by the European Union, or by a Member State of the European Union, it shall be sent to the European Union. Where treatment afforded by a Member State of the European Union is identified, it shall also be sent to the Member State concerned.

SUB-SECTION 3

Submission of a Claim and Conditions Precedent

Article 2.23

Request for Determination of the Respondent

1. If the dispute cannot be settled within 90 days of the submission of the request for consultations, the request concerns an alleged breach of the Agreement by the European Union or a Member State of the European Union and the claimant intends to initiate proceedings pursuant to Article 2.24 (Submission of a Claim), the claimant shall deliver a notice to the European Union requesting a determination of the respondent.
2. The notice shall identify the treatment in respect of which the claimant intends to initiate proceedings. Where treatment of a Member State of the European Union is identified, such notice shall also be sent to the Member State concerned.
3. The European Union shall, after having made a determination, inform the claimant within 60 days of the receipt of the notice referred to in paragraph 1 as to whether the European Union or a Member State of the European Union shall be the respondent.
4. If the claimant submits a claim pursuant to Article 2.24 (Submission of a Claim), it shall do so on the basis of such determination.
5. Where either the European Union or a Member State of the European Union acts as respondent following a determination made pursuant to paragraph 3, neither the European Union nor the Member State concerned may assert the inadmissibility of the claim, lack of jurisdiction of the Tribunal or otherwise assert that the claim or award is unfounded or invalid on the ground that the proper respondent should be or should have been the European Union rather than the Member State or vice versa.
6. The Tribunal and the Appeal Tribunal shall be bound by the determination made pursuant to paragraph 3.
7. Nothing in this Agreement or the applicable rules on dispute settlement shall prevent the exchange of all information relating to a dispute between the European Union and the Member State concerned.

Article 2.24

Submission of a Claim

1. If the dispute cannot be settled within six months of the submission of the request for consultations and, where applicable, at least three months have elapsed from the submission of the notice requesting a determination of the respondent pursuant to Article 2.23 (Request for Determination of the Respondent), the claimant, provided that it satisfies the requirements set out in this Article and in Article 2.25 (Consent), may submit a claim to the Tribunal established pursuant to Article 2.27 (Tribunal of First Instance (“Tribunal”)).
2. A claim may be submitted to the Tribunal under one of the following sets of rules on dispute settlement:
 - (a) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID);
 - (b) the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID) in accordance with the Rules on the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, where the conditions for proceedings pursuant to paragraph (a) do not apply;
 - (c) the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
 - (d) any other rules agreed by the disputing parties at the request of the claimant. In the event that the claimant proposes a specific set of dispute settlement rules and if, within 30 days of receipt of the proposal, the disputing parties have not agreed in writing on such rules, or the respondent has not replied to the claimant, the claimant may submit a claim under one of the sets of rules provided for in paragraphs (a), (b) or (c);
3. The rules on dispute settlement referred to in paragraph 2 shall apply subject to the rules set out in this Chapter, as supplemented by any rules adopted by the [...] Committee, by the Tribunal or by the Appeal Tribunal.
4. All the claims identified by the claimant in the submission of its claim pursuant to this Article must be based on treatment identified in its request for consultations pursuant to Article 2.22 (2) (c) (Consultations).
5. Claims submitted in the name of a class composed of a number of unidentified claimants, or submitted by a representative intending to conduct the proceedings in the interests of a number of identified or unidentified claimants that delegate all decisions relating to the proceedings on their behalf, shall not be admissible.
6. For greater certainty, a claimant may not submit a claim under this Section if its investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

Article 2.25

Consent

1. The respondent consents to the submission of a claim under this Section.
2. The consent under paragraph 1 and the submission of a claim under this Section shall be deemed to satisfy the requirements of:
 - (a) Article 25 of the ICSID Convention and the ICSID Additional Facility Rules for written consent of the disputing parties; and,
 - (b) Article II of the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards for an “agreement in writing”.
3. The claimant is deemed to give consent in accordance with the procedures provided for in this Section at the time of submitting a claim pursuant to Article 2.24 (Submission of a Claim).

Article 2.26

Third Party Funding

1. Where there is third party funding, the disputing party benefiting from it shall notify to the other disputing party and to the division of the Tribunal, or where the division of the Tribunal is not established, to the President of the Tribunal, the name and address of the third party funder.
2. Such notification shall be made at the time of submission of a claim, or, where the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the Agreement is concluded or the donation or grant is made.

SUB-SECTION 4

Investment Court System

Article 2.27

Tribunal of First Instance (“Tribunal”)

1. A Tribunal of First Instance (“Tribunal”) is hereby established to hear claims submitted pursuant to Article 2.24 (Submission of a Claim).

2. The [...] Committee shall, upon the entry into force of this Agreement, appoint fifteen Judges to the Tribunal. Five of the Judges shall be nationals of a Member State of the European Union, five shall be nationals of Chile and five shall be nationals of third countries.
3. The [...] Committee may decide to increase or to decrease the number of the Judges by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.
4. The Judges shall possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.
5. The Judges appointed pursuant to this Section shall be appointed for a six-year term. However, the terms of seven (two nationals of a Member State of the European Union, two nationals of Chile and three nationals of third countries) of the fifteen persons appointed immediately after the entry into force of the Agreement, to be determined by lot, shall extend to nine years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Tribunal when his or her term expires may, with the authorization of the President of the Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Judge of the Tribunal.
6. The Tribunal shall have a President and Vice-President responsible for organisational issues, who shall be selected by lot for a two-year term from among the Judges who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the [...] Committee. The Vice-President shall replace the President when the President is unavailable.
7. The Tribunal shall hear cases in divisions consisting of three Judges, of whom one shall be a national of a Member State of the European Union, one a national of Chile and one a national of a third country. The division shall be chaired by the Judge who is a national of a third country.
8. When a claim is submitted pursuant to Article 2.24 (Submission of a Claim), the President of the Tribunal shall appoint the Judges composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Judges to serve.
9. Notwithstanding paragraph 7, the disputing parties may agree that a case be heard by a sole Judge who is a national of a third country, to be selected by the President of the Tribunal. The respondent shall give sympathetic consideration to such a request from the claimant, in particular where the claimant is a small or medium-sized enterprise or

the compensation or damages claimed are relatively low. Such a request should be made at the same time as the filing of the claim pursuant to Article 2.24 (Submission of a Claim).

10. The Tribunal shall draw up its own working procedures.
11. The Judges shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities under this Agreement.
12. In order to ensure their availability, the Judges shall be paid a monthly retainer fee to be fixed by decision of the [...] Committee. [Note: the retainer fee suggested by the EU would be around 1/3rd of the retainer fee for WTO Appellate Body members (i.e. around € 2,000 per month)]. The President of the Tribunal and, where applicable, the Vice-President, shall receive a fee equivalent to the fee determined pursuant to Article 2.28 (11) (Appeal Tribunal) for each day worked in fulfilling the functions of President of the Tribunal pursuant to this Section.
13. The retainer fee shall be paid equally by both Parties into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest.
14. Unless the [...] Committee adopts a decision pursuant to paragraph 15, the amount of the other fees and expenses of the Judges on a division of the Tribunal shall be those determined pursuant to Regulation 14 (1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 2.46 (4) (Provisional Award).
15. Upon a decision by the [...] Committee, the retainer fee and other fees and expenses may be permanently transformed into a regular salary. In such an event, the Judges shall serve on a full-time basis and the [...] Committee shall fix their remuneration and related organisational matters. In that event, the Judges shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Tribunal.
16. **[THE EU RESERVES THE RIGHT TO PROPOSE PROVISIONS AIMING AT MOVING TOWARDS THE POSSIBILITY OF A PERMANENT SALARY OF THE JUDGES]**
17. The Secretariat of ICSID shall act as Secretariat for the Tribunal and provide it with appropriate support. The expenses for such support shall be met by the Parties to the Agreement equally.

Article 2.28

Appeal Tribunal

1. A permanent Appeal Tribunal is hereby established to hear appeals from the awards issued by the Tribunal.
2. The [...] Committee shall, upon the entry into force of this Agreement, appoint six Members to the Appeal Tribunal. Two of the Members shall be nationals of a Member State of the European Union, two shall be nationals of Chile and two shall be nationals of third countries.
3. The Committee may decide to increase the number of the Members of the Appeal Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.
4. The Members of the Appeal Tribunal shall possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements.
5. Members of the Appeal Tribunal shall be appointed for a six-year term. However, the terms of three of the six persons appointed immediately after the entry into force of the Agreement, to be determined by lot, shall extend to nine years. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term. A person who is serving on a division of the Tribunal when his or her term expires may, with the authorization of the President of the Tribunal, continue to serve on the division until the closure of the proceedings of that division and shall, for that purpose only, be deemed to continue to be a Member of the Appeal Tribunal.
6. The Appeal Tribunal shall have a President and Vice-President responsible for organisational issues, who shall be selected by lot for a two-year term from among the Members who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the [...] Committee. The Vice-President shall replace the President when the President is unavailable.
7. The Appeal Tribunal shall hear appeals in divisions consisting of three Members, of whom one shall be a national of a Member State of the European Union, one a national of Chile and one a national of a third country. The division shall be chaired by the Member who is a national of a third country.
8. The composition of the division hearing each appeal shall be established in each case by the President of the Appeal Tribunal on a rotation basis, ensuring that the composition of each division is random and unpredictable, while giving equal opportunity to all Members to serve.
9. The Appeal Tribunal shall draw up its own working procedures.
10. All Members serving on the Appeal Tribunal shall be available at all times and on short notice and shall stay abreast of other dispute settlement activities under this agreement.

11. In order to ensure their availability, the Members of the Appeal Tribunal shall be paid a monthly retainer fee and receive a fee for each day worked as a Member, to be determined by decision of the [...] Committee. [Note: the retainer and daily fee suggested by the EU would be around the same as for WTO Appeal Tribunal members (i.e. a retainer fee of around € 7,000 per month)]. The President of the Appeal Tribunal and, where applicable, the Vice-President, shall receive a fee for each day worked in fulfilling the functions of President of the Appeal Tribunal pursuant to this Section.
12. The remuneration of the Members shall be paid equally by both Parties into an account managed by the Secretariat of ICSID. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears will remain payable, with appropriate interest.
13. Upon a decision by the [...] Committee, the retainer fee and the fees for days worked may be permanently transformed into a regular salary. In such an event, the Members of the Appeal Tribunal shall serve on a full-time basis and the [...] Committee shall fix their remuneration and related organisational matters. In that event, the Members shall not be permitted to engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the President of the Appeal Tribunal.
14. [THE EU RESERVES THE RIGHT TO PROPOSE PROVISIONS AIMING AT MOVING TOWARDS THE POSSIBILITY OF A PERMANENT SALARY OF THE MEMBERS OF THE APPEAL TRIBUNAL]
15. The Secretariat of ICSID shall act as Secretariat for the Appeal Tribunal and provide it with appropriate support. The expenses for such support shall be met by the Parties to the Agreement equally.

Article 2.29

Ethics

1. The Judges of the Tribunal and the Members of the Appeal Tribunal shall be chosen from persons whose independence is beyond doubt. They shall not be affiliated with any government.¹² They shall not take instructions from any government or organisation with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. In so doing they shall comply with Annex II (Code of Conduct for Members of the Tribunal, the Appeal Tribunal and Mediators). In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment protection dispute under this or any other agreement or domestic law.
2. If a disputing party considers that a Judge or a Member does not meet the requirements set out in paragraph 1, it shall send a notice of challenge to the appointment to the President of the Tribunal or to the President of the Appeal Tribunal, respectively. The notice of challenge shall be sent within 15 days of the date on which the composition of

¹² For greater certainty, the fact that a person receives an income from the government, or was formerly employed by the government, or has a family relationship with a government official, does not in itself render that person ineligible.

the division of the Tribunal or of the Appeal Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.

3. If, within 15 days from the date of the notice of challenge, the challenged Judge or Member has elected not to resign from that division, the President of the Tribunal or the President of the Appeal Tribunal, respectively, shall, after hearing the disputing parties and after providing the Judge or the Member an opportunity to submit any observations, issue a decision within 45 days of receipt of the notice of challenge and forthwith notify the disputing parties and other Judges or Members of the division.
4. Challenges against the appointment to a division of the President of the Tribunal shall be decided by the President of the Appeal Tribunal and vice-versa.
5. Upon a reasoned recommendation from the President of the Appeal Tribunal, the Parties, by decision of the [...] Committee, may decide to remove a Judge from the Tribunal or a Member from the Appeal Tribunal where his behaviour is inconsistent with the obligations set out in paragraph 1 and incompatible with his continued membership of the Tribunal or Appeal Tribunal. If the behaviour in question is alleged to be that of the President of the Appeal Tribunal then the President of the Tribunal of First Instance shall submit the reasoned recommendation. Articles 2.27 (2) (Tribunal of First Instance (“Tribunal”)) and 2.28 (2) (Appeal Tribunal) shall apply *mutatis mutandis* for filling vacancies that may arise pursuant to this paragraph.

Article 2.30

Multilateral Dispute Settlement Mechanisms

The Parties shall pursue with other trading partners the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of investment disputes. Upon the entry into force between the Parties of an international agreement providing for such a multilateral mechanism applicable to disputes under this Agreement, the relevant parts of this Section shall cease to apply. The [...] Committee may adopt a decision specifying any necessary transitional arrangements.

SUB-SECTION 5

Conduct of Proceedings

Article 2.31

Applicable Law and Rules of Interpretation

1. The Tribunal shall determine whether the treatment subject to the claim is inconsistent with any of the provisions referred to in Article 2.19 (1) (Scope and Definitions) alleged by the claimant.

2. In making its determination, the Tribunal shall apply the provisions of this Agreement and other rules of international law applicable between the Parties. It shall interpret this Agreement in accordance with customary rules of interpretation of public international law, as codified in the Vienna Convention on the Law of Treaties.
3. For greater certainty, pursuant to paragraph 1, the domestic law of the Parties shall not be part of the applicable law. Where the Tribunal is required to ascertain the meaning of a provision of the domestic law of one of the Parties as a matter of fact, it shall follow the prevailing interpretation of that provision made by the courts or authorities of that Party.
4. For greater certainty, the meaning given to the relevant domestic law by the Tribunal shall not be binding upon the courts or the authorities of either Party. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of the disputing Party.
5. Where serious concerns arise as regards matters of interpretation relating to [the Investment Protection¹³ or the Resolution of Investment Disputes and Investment Court System Section of this Agreement], the [...] Committee may adopt decisions interpreting this Agreement. Any such interpretation shall be binding on the Tribunal and the Appeal Tribunal. The [...] Committee may decide that an interpretation shall have binding effect from a specific date.

Article 2.32

Other Claims

1. The Tribunal shall dismiss a claim by a claimant who has submitted a claim to the Tribunal or to any other domestic or international court or tribunal concerning the same treatment as that alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions) unless the claimant withdraws such pending claim. This paragraph shall not apply where the claimant submits a claim to a domestic court or tribunal seeking interim injunctive or declaratory relief.
2. Before submitting a claim the claimant shall provide:
 - (a) evidence that it has withdrawn any pending claim or proceedings before any domestic or international court or tribunal under domestic or international law concerning the same treatment as that alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions);
 - (b) a declaration that it will not initiate any claim or proceeding before any domestic or international court or tribunal under domestic or international law concerning the same treatment as that alleged to be inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions);

¹³ As referred to in Article 2.19 (Scope and Definitions).

- (c) a declaration that it will not enforce any award rendered pursuant to this Section before such award has become final pursuant to Article 2.48 (Final Award), and will not seek to appeal, review, set aside, annul, revise or initiate any other similar procedure before an international or domestic court or tribunal, as regards an award pursuant to this section.
3. For the purposes of this Article, the term “claimant” includes the investor and, where applicable, the locally established company.

In addition, for the purposes of paragraphs 1 and 2 (a), the term “claimant” also includes:

- (a) where the claim is submitted by an investor acting on its own behalf, all persons who, directly or indirectly, have an ownership interest in or are controlled by the investor; or
 - (b) where the claim is submitted by an investor acting on behalf of a locally established company, all persons who, directly or indirectly, have an ownership interest in or are controlled by the locally established company, and claim to have suffered the same loss or damage as the investor or locally established company.¹⁴
4. The declaration provided pursuant to paragraph 2 (b) shall cease to apply where the claim is rejected on the basis of a failure to meet the nationality requirements to bring an action under this Agreement.
5. Where claims are brought both pursuant to this Section and [Section X (State to State dispute settlement)] or another international agreement concerning the same treatment as alleged to be inconsistent with any of the provisions referred to in Article 2.19 (1) (Scope and Definitions), a division of the Tribunal constituted under this Section shall, where relevant, after hearing the disputing parties, take into account proceedings pursuant to [Section XX (State to State dispute settlement)] or another international agreement in its decision, order or award. To this end, it may also, if it considers necessary, stay its proceedings. In acting pursuant to this provision the Tribunal shall respect Article 2.46 (6) (Provisional Award).

Article 2.33

Anti-Circumvention

For greater certainty, the Tribunal shall decline jurisdiction where the dispute had arisen, or was foreseeable on the basis of a high degree of probability, at the time when the claimant acquired ownership or control of the investment subject to the dispute and the Tribunal determines, on the basis of the facts of the case, that the claimant has acquired ownership or control of the investment for the main purpose of submitting the claim under this Section. The

¹⁴ For greater certainty, the same loss or damage means loss or damage flowing from the same treatment which the person seeks to recover in the same capacity as the claimant (e.g. if the claimant sues as a shareholder, this provision would cover a related person also pursuing recovery as a shareholder).

possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the Tribunal.

Article 2.34

Preliminary Objections

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal pursuant to Article 2.27 (7) (Tribunal of First Instance (“Tribunal”)), and in any event before the first session of the division of the Tribunal, or 30 days after the respondent became aware of the facts on which the objection is based, file an objection that a claim is manifestly without legal merit.
2. The respondent shall specify as precisely as possible the basis for the objection.
3. The Tribunal, after giving the disputing parties an opportunity to present their observations on the objection, shall, at the first meeting of the division of the Tribunal or promptly thereafter, issue a decision or provisional award on the objection, stating the grounds therefor. In the event that the objection is received after the first meeting of the division of the Tribunal, the Tribunal shall issue such decision or provisional award as soon as possible, and no later than 120 days after the objection was filed. In doing so, the Tribunal shall assume the alleged facts to be true, and may also consider any relevant facts not in dispute.
4. The decision of the Tribunal shall be without prejudice to the right of a disputing party to object, pursuant to Article 2.35 (Claims Unfounded as a Matter of Law) or in the course of the proceeding, to the legal merits of a claim and without prejudice to the Tribunal's authority to address other objections as a preliminary question.

Article 2.35

Claims Unfounded as a Matter of Law

1. Without prejudice to the Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at any appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted under this Section is not a claim for which an award in favour of the claimant may be made under Article 2.46 (Provisional Award), even if the facts alleged were assumed to be true. The Tribunal may also consider any relevant facts not in dispute.
2. An objection under paragraph 1 shall be submitted to the Tribunal as soon as possible after the division of the Tribunal is constituted, and in no event later than the date the Tribunal fixes for the respondent to submit its counter-memorial or statement of defence. An objection may not be submitted under paragraph 1 as long as proceedings under Article 2.34 (Preliminary Objections) are pending, unless the Tribunal grants

leave to file an objection under this Article, after having taken due account of the circumstances of the case.

3. On receipt of an objection under paragraph 1, and unless it considers the objection manifestly unfounded, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or provisional award on the objection, stating the grounds therefor.

Article 2.36

Transparency

1. The “UNCITRAL Transparency Rules” shall apply to disputes under this Section, with the following additional obligations.
2. The request for consultations under Article 2.22 (Consultations), the request for a determination and the notice of determination under Article 2.23 (Request for Determination of the Respondent), the agreement to mediate under Article 2.21 (Mediation), the notice of challenge and the decision on challenge under Article 2.29 (Ethics), the request for consolidation under Article 2.45 (Consolidation) and all documents submitted to and issued by the Appeal Tribunal shall be included in the list of documents referred to in Article 3 (1) of the UNCITRAL Transparency Rules.
3. Exhibits shall be included in the list of documents mentioned in Article 3 (2) of the UNCITRAL Transparency Rules.
4. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, the European Union or Chile as the case may be shall make publicly available in a timely manner prior to the constitution of the division, relevant documents pursuant to paragraph 2, subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository referred to in the UNCITRAL Transparency Rules.
5. A disputing party may disclose to other persons in connection with proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, the disputing party shall ensure that those persons protect the confidential or protected information in those documents.

Article 2.37

Interim Measures

The Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal’s jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal’s jurisdiction. The Tribunal may not order the seizure of assets nor may it prevent the application of the treatment alleged to constitute a breach.

Article 2.38

Discontinuance

If, following the submission of a claim under this Section, the claimant fails to take any steps in the proceeding during 180 consecutive days or such periods as the disputing parties may agree, the claimant shall be deemed to have withdrawn its claim and to have discontinued the proceedings. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, take note of the discontinuance in an order and issue an award on costs. After such an order has been rendered the authority of the Tribunal shall lapse. The claimant may not subsequently submit a claim on the same matter.

Article 2.39

Security for Costs

1. For greater certainty, upon request, the Tribunal may order the claimant to post security for all or a part of the costs if there are reasonable grounds to believe that the claimant risks not being able to honour a possible decision on costs issued against it.
2. If the security for costs is not posted in full within 30 days after the Tribunal's order or within any other time period set by the Tribunal, the Tribunal shall so inform the disputing parties. The Tribunal may order the suspension or termination of the proceedings.

Article 2.40

The Non-Disputing Party to the Agreement

1. The respondent shall, within 30 days after receipt or promptly after any dispute concerning confidential or protected information has been resolved,¹⁵ deliver to the non-disputing Party:
 - (a) a request for consultations referred to in Article 2.22 (Consultations), a notice requesting a determination referred to in Article 2.23 (Request for Determination of the Respondent), a claim referred to in Article 2.24 (Submission of a Claim) and any other documents that are appended to such documents;
 - (b) on request:
 - (i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;

¹⁵ For greater certainty, the term confidential or protected information shall be understood as defined in and determined pursuant to Article 7 of the UNCITRAL Transparency Rules.

- (ii) written submissions made to the Tribunal by a third person;
 - (iii) minutes or transcripts of hearings of the Tribunal, where available; and
 - (iv) orders, awards and decisions of the Tribunal.
- (c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal.
2. The non-disputing Party has the right to attend a hearing held under this Section.
 3. The Tribunal shall accept or, after consultation with the disputing parties, may invite written or oral submissions on issues relating to the interpretation of this Agreement from the non-disputing Party. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the non-disputing Party.

Article 2.41

Intervention by Third Parties

1. The Tribunal shall permit any natural or legal person which can establish a direct and present interest in the result of the dispute (the intervener) to intervene as a third party. The intervention shall be limited to supporting, in whole or in part, the award sought by one of the disputing parties.
2. An application to intervene must be lodged within 90 days of the publication of submission of the claim pursuant to Article 2.24 (Submission of a Claim). The Tribunal shall rule on the application within 90 days, after giving the disputing parties an opportunity to submit their observations.
3. If the application to intervene is granted, the intervener shall receive a copy of every procedural document served on the disputing parties, save, where applicable, confidential documents. The intervener may submit a statement in intervention within a time period set by the Tribunal after the communication of the procedural documents. The disputing parties shall have an opportunity to reply to the statement in intervention. The intervener shall be permitted to attend the hearings held under this Chapter and to make an oral statement.
4. In the event of an appeal, a natural or legal person who has intervened before the Tribunal shall be entitled to intervene before the Appeal Tribunal. Paragraph 3 shall apply mutatis mutandis.
5. The right of intervention conferred by this Article is without prejudice to the possibility for the Tribunal to accept amicus curiae briefs from third parties in accordance with Article 2.36 (Transparency).

6. For greater certainty, the fact that a natural or legal person is a creditor of the claimant shall not be considered as sufficient in itself to establish that it has a direct and present interest in the result of the dispute.

Article 2.42

Expert Reports

The Tribunal, at the request of a disputing party or, after consulting the disputing parties, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other matters raised by a disputing party in a proceeding.

Article 2.43

Indemnification and Other Compensation

The Tribunal shall not accept as a valid defence or similar claim the fact that the claimant or the locally established company has received, or will receive indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Section.

Article 2.44

Role of the Parties to the Agreement

1. No Party shall bring an international claim, in respect of a dispute submitted pursuant to Article 2.24 (Submission of a Claim) or in respect of treatment covered by this Section and subject to mediation pursuant to Article 2.21 (Mediation), unless the other Party has failed to abide by and comply with the award rendered in such dispute or with a mutually agreed solution reached pursuant to Article 2.20 (Amicable Resolution) or 2.21 (Mediation). This shall not exclude the possibility of dispute settlement under [Section X (State to State dispute settlement)] in respect of a measure of general application even if that measure is alleged to have violated the Agreement as regards a specific investment in respect of which a dispute has been initiated pursuant to Article 2.24 (Submission of a Claim). This is without prejudice to Article 2.40 (The Non-Disputing Party to the Agreement) of this Section or Article 5 of the UNICTRAL Transparency Rules.
2. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 2.45

Consolidation

1. In the event that two or more claims submitted under this Section have a question of law or fact in common and arise out of the same events and circumstances, the respondent may submit to the President of the Tribunal a request for the consolidated consideration of all such claims or part of them. The request shall stipulate:
 - (a) the names and addresses of the disputing parties to the claims sought to be consolidated;
 - (b) the scope of the consolidation sought; and
 - (c) the grounds for the request.

The respondent shall also deliver the request to each claimant in a claim which the respondent seeks to consolidate.

2. In the event that all disputing parties to the claims sought to be consolidated agree on the consolidated consideration of the claims, the disputing parties shall submit a joint request to the President of the Tribunal pursuant to paragraph 1. The President of the Tribunal shall, after receipt of such joint request, constitute a new division (the “consolidating division”) of the Tribunal pursuant to Article 2.27 (Tribunal of First Instance (“Tribunal”)) which shall have jurisdiction over all or part of the claims which are subject to the joint consolidation request.
3. In the event that the disputing parties referred to in paragraph 2 have not reached an agreement on consolidation within thirty days of the receipt of the request for consolidation referred to in paragraph 1 by the last claimant to receive it, the President of the Tribunal shall constitute a consolidating division of the Tribunal pursuant to Article 2.27 (Tribunal of First Instance (“Tribunal”)). The consolidating division shall assume jurisdiction over all or part of the claims, if, after considering the views of the disputing parties, it decides that to do so would best serve the interest of fair and efficient resolution of the claims, including the interest of consistency of awards.
4. The consolidated consideration of the claims shall be submitted to the consolidating division of the Tribunal under application of the dispute settlement rules chosen by agreement of the claimants from the list contained in Article 2.24 (Submission of a Claim).
5. If the claimants have not agreed upon the dispute settlement rules within 30 days after the date of receipt of the request for consolidated consideration by the last claimant to receive it, the consolidated consideration of the claims shall be submitted to the consolidating division of the Tribunal under application of the UNCITRAL arbitration rules.
6. Divisions of the Tribunal constituted under Article 2.27 (Tribunal of First Instance (“Tribunal”)) shall cede jurisdiction in relation to the claims, or parts thereof, over which the consolidating division has jurisdiction and the proceedings of such divisions shall be stayed or adjourned, as appropriate. The award of the consolidating division of the Tribunal in relation to the parts of the claims over which it has assumed jurisdiction shall be binding on the divisions which have jurisdiction over the remainder of the claims, as of the date the award becomes final pursuant to Article 2.48 (Final Award).

7. A claimant whose claim is subject to consolidation may withdraw its claim or the part thereof subject to consolidation from dispute settlement proceedings under this Article and such claim or part thereof may not be resubmitted under Article 2.24 (Submission of a Claim).
8. At the request of the respondent, the consolidating division of the Tribunal, on the same basis and with the same effect as paragraphs 3 and 6 above, may decide whether it shall have jurisdiction over all or part of a claim falling within the scope of paragraph 1 above, which is submitted after the initiation of the consolidation proceedings.
9. At the request of one of the claimants, the consolidating division of the Tribunal may take such measures as it sees fit in order to preserve the confidentiality of protected information of that claimant vis-à-vis other claimants. Such measures may include the submission of redacted versions of documents containing protected information to the other claimants or arrangements to hold parts of the hearing in private.

Article 2.46

Provisional Award

1. Where the Tribunal concludes that the treatment in dispute is inconsistent with the provisions referred to in Article 2.19 (1) (Scope and Definitions) alleged by the claimant, the Tribunal may, on the basis of a request from the claimant, and after hearing the disputing parties, award only:
 - (a) monetary damages and any applicable interest;
 - (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages representing the fair market value of the property at the time immediately before the expropriation or impending expropriation became known, whichever is earlier, and any applicable interest in lieu of restitution, determined in a manner consistent with Article 2.12 (Expropriation) of Section B (Investment Protection) of Chapter II (Investment).

Where the claim was submitted on behalf of a locally-established company, any award under this paragraph shall provide that:

- (a) any monetary damages and interest shall be paid to the locally established company;
- (b) any restitution shall be made to the locally established company.

The Tribunal may not order the repeal, cessation or modification of the treatment concerned.

2. Monetary damages shall not be greater than the loss suffered by the claimant or, as applicable, the locally established company, as a result of the breach of the relevant

provisions of the Agreement, reduced by any prior damages or compensation already provided by the Party concerned.

3. The Tribunal may not award punitive damages.
4. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion such costs between the disputing parties if it determines that apportionment is appropriate in the circumstance of the case. Other reasonable costs, including the reasonable costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the case. Where only some parts of the claims have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims. The Appeal Tribunal shall deal with costs in accordance with this Article.
5. No later than one year after the entry into force of this Agreement, the [...] Committee shall adopt supplemental rules on fees for the purpose of determining the maximum amount of costs of legal representation and assistance that may be borne by an unsuccessful claimant which is a natural person or a small or medium-sized enterprise. Such supplemental rules shall, in particular, take into account the financial resources of such claimants and the amounts of compensation sought.
6. The Tribunal shall issue a provisional award within 18 months of the date of submission of the claim. If that deadline cannot be respected, the Tribunal shall adopt a decision to that effect, which will specify the reasons for such delay.

Article 2.47

Appeal Procedure

1. Either disputing party may appeal before the Appeal Tribunal a provisional award, within 90 days of its issuance. The grounds for appeal are:
 - (a) that the Tribunal has erred in the interpretation or application of the applicable law;
 - (b) that the Tribunal has manifestly erred in the appreciation of the facts, including the appreciation of relevant domestic law; or
 - (c) those provided for in Article 52 of the ICSID Convention, in so far as they are not covered by (a) and (b).
2. The Appeal Tribunal shall reject the appeal where it finds that the appeal is unfounded. [It may also reject the appeal on an expedited basis where it is clear that the appeal is manifestly unfounded.]
3. If the Appeal Tribunal finds that the appeal is well founded, the decision of the Appeal Tribunal shall modify or reverse the legal findings and conclusions in the provisional

award in whole or part. Its decision shall specify precisely how it has modified or reversed the relevant findings and conclusions of the Tribunal.

4. When the facts established by the Tribunal so permit, the Appeal Tribunal shall apply its own legal findings and conclusions to such facts and render a final decision. When that is not possible, it shall refer the matter back to the Tribunal.
5. As a general rule, the appeal proceedings shall not exceed 180 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appeal Tribunal issues its decision. When the Appeal Tribunal considers that it cannot issue its decision within 180 days, it shall inform the disputing parties in writing of the reasons for the delay together with an estimate of the period within which it will issue its decision. In no case should the proceedings exceed 270 days.
6. A disputing party lodging an appeal shall provide security for the costs of appeal and for any amount awarded against it in the provisional award.
7. The provisions of Articles 2.26 (Third Party Funding), 2.36 (Transparency), 2.37 (Interim Decisions), 2.38 (Discontinuance), 2.40 (The Non-Disputing Party to the Agreement) shall apply mutatis mutandis in respect of the appeal procedure.

Article 2.48

Final Award

1. A provisional award issued pursuant to this Section shall become final if neither disputing party has appealed the provisional award pursuant to Article 2.47 (Appeal Procedure).
2. When a provisional award has been appealed and the Appeal Tribunal has rejected the appeal pursuant to Article 2.47 Appeal Procedure, the provisional award shall become final on the date of rejection of the appeal by the Appeal Tribunal.
3. When a provisional award has been appealed and the Appeal Tribunal has rendered a final decision, the provisional award as modified or reversed by the Appeal Tribunal shall become final on the date of the issuance of the final decision of the Appeal Tribunal.
4. When a provisional award has been appealed and the Appeal Tribunal has modified or reversed the legal findings and conclusions of the provisional award and referred the matter back to the Tribunal, the Tribunal shall, after hearing the disputing parties if appropriate, revise its provisional award to reflect the findings and conclusions of the Appeal Tribunal. The Tribunal shall be bound by the findings made by the Appeal Tribunal. The Tribunal shall seek to issue its revised award within 90 days of receiving the decision of the Appeal Tribunal. The revised provisional award will become final 90 days after its issuance.
5. The term "final award" shall include any final decision of the Appeal Tribunal rendered pursuant to Article 2.47 (Appeal Procedure).

Article 2.49

Enforcement of Awards

1. An award rendered pursuant to this Section shall not be enforceable until it has become final pursuant to Article 2.48 (Final Award). Final awards issued pursuant to this Section by the Tribunal shall be binding between the disputing parties and shall not be subject to appeal, review, set aside, annulment or any other remedy¹⁶.
2. Each Party shall recognize an award rendered pursuant to this Agreement as binding and enforce the pecuniary obligation within its territory as if it were a final judgement of a court in that Party.
3. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where such execution is sought.
4. For greater certainty, [Article X (Rights and obligations of natural or juridical persons under this Agreement, Chapter Y)] shall not prevent the recognition, execution and enforcement of awards rendered pursuant to this Section.
5. For the purposes of Article 1 of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, final awards issued pursuant to this Section are arbitral awards relating to claims that are considered to arise out of a commercial relationship or transaction.
6. For greater certainty and subject to paragraph 1, where a claim has been submitted to dispute settlement pursuant to Article 2.24 (2) (a) (Submission of a Claim), a final award issued pursuant to this Section shall qualify as an award under Section 6 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (ICSID).

¹⁶ For greater certainty, this does not prevent a disputing party from requesting the Tribunal to revise an award or to interpret an award in accordance with the applicable rules on dispute settlement where this possibility is available under the applicable rules.

ANNEX I

MEDIATION MECHANISM FOR INVESTOR-TO-STATE DISPUTES

Article 1

Objective and Scope

The objective of the mediation mechanism is to facilitate the finding of a mutually agreed solution through a comprehensive and expeditious procedure with the assistance of a mediator.

Article 2

Initiation of the Procedure

1. Either disputing party may request, at any time, the commencement of a mediation procedure. Such request shall be addressed to the other party in writing. Where the request concerns an alleged breach of the Agreement by the authorities of the European Union or by the authorities of the Member States of the European Union, and no respondent has been determined pursuant to Article 2.23 (Request for Determination of the Respondent) of Section C (Resolution of Investment Disputes and Investment Court System), it shall be addressed to the European Union. Where the request is accepted, the response shall specify whether the European Union or the Member State concerned will be a party to the mediation¹⁷.
2. The party to which such request is addressed shall give sympathetic consideration to the request and accept or reject it in writing within 10 working days of its receipt.

Article 3

Selection of the Mediator

1. If both disputing parties agree to a mediation procedure, a mediator shall be selected in accordance with the procedure set out in Article 2.21 (Mediation) of Section C (Resolution of Investment Disputes and Investment Court System). The disputing parties shall endeavour to agree on a mediator within 15 working days from the receipt of the reply to the request.
2. A mediator shall not be a national of either Party to the Agreement, unless the disputing parties agree otherwise.

¹⁷ For greater certainty, where the request concerns treatment by the European Union, the party to the mediation shall be the European Union and any Member State concerned shall be fully associated in the mediation. Where the request concerns exclusively treatment by a Member State, the party to the mediation shall be the Member State concerned, unless it requests the European Union to be party.

3. The mediator shall assist, in an impartial and transparent manner, the disputing parties in reaching a mutually agreed solution.

Article 4

Rules of the Mediation Procedure

1. Within 10 working days after the appointment of the mediator, the disputing party having invoked the mediation procedure shall present, in writing, a detailed description of the problem to the mediator and to the other disputing party. Within 20 working days after the date of delivery of this submission, the other disputing party may provide, in writing, its comments to the description of the problem. Either disputing party may include in its description or comments any information that it deems relevant.
2. The mediator may decide on the most appropriate way of bringing clarity to the measure concerned. In particular, the mediator may organise meetings between the disputing parties, consult the disputing parties jointly or individually, seek the assistance of or consult with relevant experts and stakeholders and provide any additional support requested by the disputing parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the disputing parties.
3. The mediator may offer advice and propose a solution for the consideration of the disputing parties which may accept or reject the proposed solution or may agree on a different solution. However, the mediator shall not advise or give comments on the consistency of the measure at issue with this Agreement.
4. The procedure shall take place in the territory of the Party concerned, or by mutual agreement in any other location or by any other means.
5. The disputing parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.
6. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a disputing party has designated as confidential.
7. The procedure shall be terminated:
 - (a) by the adoption of a mutually agreed solution by the disputing parties, on the date of adoption;
 - (b) by a written declaration of the mediator, after consultation with the disputing parties, that further efforts at mediation would be to no avail;
 - (c) by written notice of a disputing party.

Article 5

Implementation of a Mutually Agreed Solution

1. Where a solution has been agreed, each disputing party shall take the measures necessary to implement the mutually agreed solution within the agreed timeframe.
2. The implementing disputing party shall inform the other disputing party in writing of any steps or measures taken to implement the mutually agreed solution.
3. On request of the disputing parties, the mediator shall issue to the disputing parties, in writing, a draft factual report, providing a brief summary of (1) the measure at issue in these procedures; (2) the procedures followed; and (3) any mutually agreed solution reached as the final outcome of these procedures, including possible interim solutions. The mediator shall provide the disputing parties 15 working days to comment on the draft report. After considering the comments of the disputing parties submitted within the period, the mediator shall submit, in writing, a final factual report to the disputing parties within 15 working days. The factual report shall not include any interpretation of this Agreement.

Article 6

Relationship to Dispute Settlement

1. The procedure under this mediation mechanism is not intended to serve as a basis for dispute settlement procedures under this Agreement or another agreement. A disputing party shall not rely on or introduce as evidence in such dispute settlement procedures, nor shall any adjudicative body take into consideration:
 - (a) positions taken by a disputing party in the course of the mediation procedure;
 - (b) the fact that a disputing party has indicated its willingness to accept a solution to the measure subject to mediation; or
 - (c) advice given or proposals made by the mediator.
2. The mediation mechanism is without prejudice to the rights and obligations of the Parties and the disputing parties under Section C (Resolution of Investment Disputes and Investment Court System) and Chapter YY (State to State Dispute Settlement)].
3. Unless the disputing parties agree otherwise, and without prejudice to Article 2.22 (6) (Consultations), all steps of the procedure, including any advice or proposed solution, shall be confidential. However, any disputing party may disclose to the public that mediation is taking place.

Article 7

Time Limits

Any time limit referred to in this Annex may be modified by mutual agreement between the disputing parties.

Article 8

Costs

1. Each disputing party shall bear its own expenses derived from the participation in the mediation procedure.
2. The disputing parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the mediator. Remuneration of the mediator shall be in accordance with that foreseen for Judges of the Tribunal under Article 2.27 (Tribunal of First Instance (“Tribunal”)) of Section C (Resolution of Investment Disputes and Investment Court System).

ANNEX II

CODE OF CONDUCT FOR MEMBERS OF THE TRIBUNAL, THE APPEAL TRIBUNAL AND MEDIATORS

Article 1

Definitions

In this Code of Conduct:

- (a) “member” means a Judge of the Tribunal or a Member of the Appeal Tribunal established pursuant to [Section C (Resolution of Investment Disputes and Investment Court System)];
- (b) “mediator” means a person who conducts mediation in accordance with Article 2.21 (Mediation) of [Section C (Resolution of Investment Disputes and Investment Court System)];
- (c) “candidate” means an individual who is under consideration for selection as a member of the Tribunal or Appeal Tribunal;
- (d) “assistant” means a person who, under the terms of appointment of a member, assists the member in his research or supports him in his duties;
- (e) “staff”, in respect of a member, means persons under the direction and control of the member, other than assistants;
- (f) “party” means a disputing party under [Section C (Resolution of Investment Disputes and Investment Court System)].

Article 2

Responsibilities to the Process

Candidates and members shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interest and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former members must comply with the obligations established in Articles 6 (Obligations of Former Members) and 7 (Confidentiality) of this Code of Conduct.

Article 3

Disclosure Obligations

1. Prior to their appointment candidates shall disclose to the Parties any past and present interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias. To this end, candidates shall make all reasonable efforts to become aware of any such interests, relationships or matters.
2. Members shall communicate matters concerning actual or potential violations of this Code of Conduct in writing to the disputing parties.
3. Members shall at all times continue to make all efforts to become aware of any interests, relationships or matters referred to in paragraph 1 of this Article. Members shall disclose such interests, relationships or matters by informing the Parties and, where relevant, the disputing parties.

Article 4

Duties of Members

1. Members shall perform their duties thoroughly and expeditiously throughout the course of the proceeding and shall do so with fairness and diligence.
2. Members shall consider only those issues raised in the proceeding and which are necessary for a decision or award and shall not delegate this duty to any other person.
3. Members shall take all appropriate steps to ensure that their assistant and staff are aware of, and comply with, Articles 2 (Responsibilities to the Process), 3 (Disclosure Obligations), 5 (Independence and Impartiality of Members) and 7 (Confidentiality) of this Code of Conduct.
4. Members shall not engage in ex parte contacts concerning the proceeding.

Article 5

Independence and Impartiality of Members

1. Members must be independent and impartial and avoid creating an appearance of bias or impropriety and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or disputing party or fear of criticism.
2. Members shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere or appear to interfere, with the proper performance of their duties.
3. Members may not use their position to advance any personal or private interests and shall avoid actions that may create the impression that they are in a position to be influenced by others.

4. Members may not allow financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgment.
5. Members must avoid entering into any relationship or acquiring any financial interest that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or bias.

Article 6

Obligations of Former Members

1. Former Members shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decisions or awards of the Tribunal or the Appeal Tribunal.
2. Without prejudice to Articles 2.27 (5) (Tribunal of First Instance ("Tribunal")) and 2.28(5) (Appeal Tribunal), Members shall undertake that after the end of their term, they shall not become involved:
 - a. in any manner whatsoever in investment disputes which were pending before the Tribunal or the Appeal Tribunal before the end of their term;
 - b. in any manner whatsoever in investment disputes directly and clearly connected with disputes, including concluded disputes, which they have dealt with as Members of the Tribunal or the Appeal Tribunal.
3. Members shall undertake that for a period of three years after the end of their term, they shall not act as representatives of one of the disputing parties in investment disputes before the Tribunal or the Appeal Tribunal.
4. If the President of the Tribunal or of the Appeal Tribunal is informed or otherwise becomes aware that a former Member of the Tribunal or of the Appeal Tribunal, respectively, is alleged to have acted inconsistently with the obligations set up in paragraphs 1 through 3, he shall examine the matter, provide the opportunity to the former Member to be heard, and, after verification, inform thereof:
 - a. the professional body or other such institution with which that former Member is affiliated;
 - b. the Contracting Parties; and
 - c. the President of any other relevant Investment Tribunal or Appeal Tribunal in view of the initiation of appropriate measures.

The President of the Tribunal or of the Appeal Tribunal shall make public its decision to take the actions referred to in subparagraphs (a), b and (c) above, together with the reasons therefor.

Article 7

Confidentiality

1. No members or former members shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding, except for the purposes of the proceeding, and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
2. No members shall disclose a decision or award or parts thereof prior to its publication in accordance with the transparency provisions of Article 2.36 (Transparency) of [Section C (Resolution of Investment Disputes and Investment Court System)] as applicable.
3. No members or former members shall at any time disclose the deliberations of the Tribunal or Appeal Tribunal, or any member's views, whatever they may be.

Article 8

Expenses

Each member shall keep a record and render a final account of the time devoted to the procedure and of the expenses incurred, as well as the time and expenses of their assistant and staff.

Article 9

Mediators

The rules set out in this Code of Conduct as applying to members or former members shall apply, *mutatis mutandis*, to mediators.

Article 10

Consultative Committee

1. The President of the Tribunal and the President of the Appeal Tribunal shall be assisted by a Consultative Committee for ensuring the proper application of this Code of Conduct, Article 2.29 (Ethics) and for the execution of any other task, where so provided.

2. The President of the Tribunal and the President of the Appeal Tribunal shall be assisted by Consultative Committees composed of the respective Vice-President and of the two most senior Members of the Tribunal or of the Appeal Tribunal.

CHAPTER III

CROSS-BORDER SUPPLY OF SERVICES

Article 3.1

Scope and Definitions

1. This Chapter applies to measures of the Parties affecting the cross border supply of all services sectors with the exception of:
 - (a) audio-visual services;
 - (b) national maritime cabotage¹⁸; and
 - (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) groundhandling services;
 - (v) airport operation services;
2. Government procurement is subject to the provisions of Chapter [X (on public procurement)]. Articles 3.2 [Market Access], 3.3 [National Treatment] [and 3.4 [Most-Favoured Nation Treatment]] shall not apply to government procurement.
3. Subsidies are subject to the provisions of Chapter [YY (on Competition and Subsidies)] and the provisions of this Chapter shall not apply to subsidies granted by the Parties.

Article 3.2

Market Access

¹⁸ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in [...] or a Member State of the European Union and another port or point located in [...] or that same Member State of the European Union, including on its continental shelf, as provided in the UN Convention on the Law of the Sea, and traffic originating and terminating in the same port or point located in [...] or a Member State of the European Union.

1. In sectors or subsectors where market access commitments are undertaken, neither Party shall adopt or maintain with respect to market access through the cross-border supply of services, either on the basis of its entire territory or on the basis of a territorial subdivision, a measure that:
 - (a) limits the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test¹⁹;
 - (b) limits the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limits the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

Article 3.3

National Treatment

1. Each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party 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 or service suppliers of the Party compared to like services or service suppliers of the other Party.
4. Nothing in this Article shall be construed to require any Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

Article 3.4

Most Favoured Nation Treatment

[The EU reserves the right to propose a text on most favoured nation treatment]

Article 3.5

¹⁹ Subparagraph 2(a) includes measures which require a service supplier of the other Party to have an enterprise within the meaning of paragraph (d) of Article 1.3 (Definitions) or to be resident in a Party's territory as a condition for the cross-border supply of a service.

Reservations and Exceptions

1. Articles X (National Treatment), [X (Most Favoured Nation Treatment)] do not apply to:
 - a. any existing non-conforming measure that is maintained by a Party at the level of:
 - i. the European Union, as set out in its Annex I;
 - ii. a national government, as set out by that Party in its Annex I;
 - iii. regional government, as set out by that Party in its Annex I; or
 - iv. a local government.
 - b. the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
 - c. an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X (National Treatment), [X (Most Favoured Nation Treatment)].
2. Articles X (National Treatment), [X (Most Favoured Nation Treatment)] do not apply to measures that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Annex II.
3. Article X (Market Access) does not apply to any measure that a Party adopts or maintains with respect to committed sectors or subsectors as set out in its Annex III.

CHAPTER IV

TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

[The EU reserves the right to submit at a later stage an Appendix with additional provisions related to entry and temporary stay of natural persons for business purposes]

Article 4.1

Scope and Definitions

1. This Chapter applies to measures of the Parties concerning the entry and temporary stay in their territories of Business Visitors for Establishment Purposes, Intra-corporate Transferees, Business Sellers, Contractual Service Suppliers and Independent Professionals in accordance with paragraph 2.
2. For the purpose of this Chapter:
 - (a) “business visitors for establishment purposes” mean natural persons working in a senior position within a juridical person of a Party who are responsible for establishing an enterprise of such juridical person. They do not offer or provide services or engage in any other economic activity than required for establishment purposes. They do not receive remuneration from a source located within the host Party.
 - (b) “intra-corporate transferees” mean natural persons who have been employed by a juridical person or its branch or have been partners in it for at least one year and who are temporarily transferred to an enterprise of the juridical person in the territory of the other Party. The natural person concerned must belong to one of the following categories:
 - (i) managers/executives: Persons working in a senior position within a juridical person of a Party, who primarily direct the management of the enterprise²⁰ in the other Party, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least:
 - (A) directing the enterprise or a department or subdivision thereof; and
 - (B) supervising and controlling the work of other supervisory, professional or managerial employees; and
 - (C) having the personal authority to recruit and dismiss or to recommend recruitment, dismissal or other personnel-related actions.

²⁰ For greater certainty, while managers or executives do not directly perform tasks concerning the actual supply of the services, this does not prevent them, in the course of executing their duties as described above, from performing such tasks as may be necessary for the provision of the services.

- (ii) specialists: persons working within a juridical person possessing specialised knowledge essential to the enterprise's areas of activity, techniques or management. In assessing such knowledge, account shall be taken not only of knowledge specific to the enterprise, but also of whether the person has a high level of qualification, including adequate professional experience, referring to a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession;
 - (iii) trainee employees: Persons who have been employed by a juridical person or its branch for at least one year, possess a university degree and are temporarily transferred for career development purposes or to obtain training in business techniques or methods²¹.
- (c) “short-term business visitors” mean natural persons who are seeking entry and temporary stay in the territory of the other Party , who do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party. The natural person concerned must belong to one of the following categories:
- (i) “business sellers” are short-term business visitors who are representatives of a services or goods supplier of one Party for the purpose of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier. They are not engaged in the supply of a service in the framework of a contract concluded between an enterprise that has no commercial presence in the territory of the Party where the short-term business visitors are staying temporarily, and a consumer in that territory. They are not commission agents.
 - (ii) ‘installers and maintainers’ are short-term business visitors possessing specialised knowledge essential to a seller's or lessor's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer and related services, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, throughout the duration of the warranty or service contract.
- (d) “contractual services suppliers” mean natural persons employed by a juridical person of a Party which is not itself established in the territory of the other Party and is not an agency for placement and supply services of personnel nor acting through such an agency and which has concluded a bona fide contract to supply services with a final consumer in the other Party, requiring the presence on a temporary basis of its employees in that Party, in order to fulfil the contract to provide services²².

²¹ The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For AT, CZ, DE, FR, ES, HU and LT, training must be linked to the university degree which has been obtained.

²² The service contract referred to under (d) and (e) shall comply with the requirements of the laws, and regulations and requirements of the Party where the contract is executed.

- (e) “independent professionals” mean natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have not established in the territory of the other Party and who have concluded a bona fide contract (other than through an agency for placement and supply services of personnel) to supply services with a final consumer in the latter Party, requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services²³.

Article 4.2

Intra-corporate Transferees and Business Visitors for Establishment Purposes

1. For every sector committed in accordance with Chapter II Section A of this Title, and subject to any reservations listed in their schedules of commitments²⁴, each Party
 - a) shall allow the entry and temporary stay of Intra-corporate Transferees and Business Visitors for establishment Purposes;
 - b) shall allow the employment in its territory of Intra-corporate Transferees of the other Party ; and
 - b) shall not maintain or adopt measures either on the basis of a territorial subdivision or on the basis of its entire territory, which are defined as limitations on the total number of natural persons that an investor may employ as Intra-Corporate Transferees and Business Visitors for Establishment Purposes in a specific sector in the form of numerical quotas and as discriminatory limitations.
2. Each Party shall not maintain or adopt Economic Needs Tests for Intra-corporate Transferees and Business Visitors for Establishment Purposes.
3. The permissible length of stay shall be for a period of up to three years for Managers/ Executives and Specialists, up to one year for Trainee Employees, and up to ninety days within any six month period for Business Visitors for Establishment Purposes.

Article 4.3

Short-term business visitors

Subject to the scope exclusions set out in Chapter II Article 2(1) and subject to any reservations listed in their Annexes with commitments²⁵ each Party

²³ The service contract referred to under (d) and (e) shall comply with the requirements of the laws, and regulations and requirements of the Party where the contract is executed.

²⁴ If a Party set out a reservation in Annex I, Annex II or Annex III, the reservation also constitutes a reservation to this article to the extent that the measure set out in or permitted by the reservation affects the treatment of a natural person for business purposes entering and temporary staying in the territory of the other Party.

- a) shall allow the entry and temporary stay of short-term business visitors for a period of up to ninety days in any twelve month period; and
- b) shall not maintain or adopt measures either on the basis of a territorial subdivision or on the basis of its entire territory, which are defined as limitations on the total number of short-term business visitors in a specific sector in the form of numerical quotas and as discriminatory limitations.
- c) shall not maintain or adopt economic needs tests for short-term business visitors.

Article 4.4

Contractual Service Suppliers and Independent Professionals

1. In accordance with the conditions specified in paragraphs 3, 4 and 5, each Party shall allow the supply of services into their territory by Contractual Services Suppliers of the other Party, in the sectors listed for that category in Annex XXX [reservations on contractual services suppliers and independent professionals], subject to the following conditions:
 - a) The natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract not exceeding twelve months.
 - b) The natural persons entering the other Party should be offering such services as employees of the juridical person supplying the services for at least one year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, on the date of submission of an application for entry into the other Party, at least three years professional experience¹⁶ in the sector of activity which is the subject of the contract.
 - c) The natural persons entering the other Party must possess:
 - (i) a university degree or a qualification demonstrating knowledge of an equivalent level¹⁷ and
 - (ii) professional qualifications where this is required to exercise an activity pursuant to the laws, regulations or legal requirements of the Party where the service is supplied.

²⁵ If a Party set out a reservation in Annex I, Annex II or Annex III, the reservation also constitutes a reservation to this article to the extent that the measure set out in or permitted by the reservation affects the treatment of a natural person for business purposes entering and temporary staying in the territory of the other Party.

¹⁶ Obtained after having reached the age of majority.

¹⁷ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

- d) The natural person shall not receive remuneration for the provision of services in the territory of the other Party other than the remuneration paid by the juridical person employing the natural person.
 - e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided.
 - f) The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as may be required by the laws, regulations or other legal requirements of the Party where the service is supplied.
2. In accordance with the conditions specified in paragraphs 3, 4 and 5, each Party shall allow the supply of services into their territory by Independent Professionals of the other Party, in the sectors listed for that category in Annex XXX [reservations on contractual services suppliers and independent professionals], subject to the following conditions:
- a) The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding twelve months
 - b) The natural persons entering the other Party must possess, on the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract.
 - c) The natural persons entering the other Party must possess:
 - (i) a university degree or a qualification demonstrating knowledge of an equivalent level¹⁸ and
 - (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or other legal requirements of the Party where the service is supplied.
 - d) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided.
3. Unless otherwise specified in Annex XXX [*reservations on contractual service suppliers and independent professionals*], a Party shall not adopt or maintain limitations on the total number of Contract Service Suppliers and Independent Professionals of the other Party allowed temporary entry, in the form of numerical restrictions or an economic needs test.
4. Unless otherwise specified in their schedules of commitments²⁶, a Party shall not adopt or maintain discriminatory limitations on Contract Service Suppliers and Independent Professionals of the other Party.

¹⁸ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

5. The permissible length of stay shall be for a cumulative period of not more than six months in any twelve month period or for the duration of the contract, whichever is less.

Article 4.5

Transparency

1. Each Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons with respect to whom commitments are undertaken in accordance with this Chapter.
2. The information referred to in paragraph 1 shall, to the extent possible, include inter alia the following information relevant to the entry and temporary stay of natural persons:
 - (a) entry conditions,
 - (b) an indicative list of documentation that may be required in order to verify the fulfilment of the conditions,
 - (c) processing time,
 - (d) applicable fees,
 - (e) appeal procedures.

²⁶ If a Party set out a reservation in Annex I, Annex II or Annex III, the reservation also constitutes a reservation to this article to the extent that the measure set out in or permitted by the reservation affects the treatment of a natural person for business purposes entering and temporary staying in the territory of the other Party.

CHAPTER V

REGULATORY FRAMEWORK

SECTION A

DOMESTIC REGULATION

Article 5.1

Scope and Definitions

1. This Section applies to measures by the Parties relating to licensing requirements and procedures, qualification requirements and procedures that affect:
 - (a) the cross-border supply of services;
 - (b) the supply of a service or pursuit of any other economic activity through the establishment of an enterprise and operation of a covered investment;
 - (c) the supply of a service through temporary stay in their territory of categories of natural persons as defined in Article 4.1 (Scope and Definitions).
2. This Section only applies to sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply.
3. This section does not apply to measures to the extent that they constitute limitations subject to scheduling under Articles 2.2 or 3.2 (Market Access) and/or Article 2.3 or 3.3 (National Treatment).
4. For the purpose of this Section,
 - (a) “licensing requirements” are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorisation to carry out the activities as defined in paragraph 1 (a) to (c).
 - (b) “licensing procedures” are administrative or procedural rules that a natural or a juridical person, seeking authorisation to carry out the activities as referred to in paragraph 1 (a) to (c), including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licencing requirements.
 - (c) “qualification requirements” are substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service.

- (d) “qualification procedures” are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service.
- (e) “competent authority” is any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a decision concerning the authorisation to supply a service, including through establishment or concerning the authorisation to establish in an economic activity other than services.

Article 5.2

Conditions for Licensing and Qualification

1. Each Party shall ensure that measures relating to licencing requirements, licencing procedures, qualification requirements and qualification procedures are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.
2. The criteria referred to in paragraph 1 shall be:
 - (a) clear;
 - (b) objective and transparent; and
 - (c) pre-established and accessible to the public and interested persons.
3. An authorisation or a licence shall, subject to availability, be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation or licence have been met.
4. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.
5. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.
6. Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, each Party may take into account legitimate policy objectives,

including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

Article 5.3

Licensing and Qualification Procedures

1. Licensing and qualification procedures and formalities shall be clear, made public in advance, and shall not in themselves constitute a restriction on the supply of a service or the pursuit of any other economic activity. Each Party shall endeavour to make such procedures and formalities as simple as possible and shall not unduly complicate or delay the provision of the service. Any licensing fees²⁷ which the applicants may incur from their application should be reasonable and shall not, in themselves, restrict the supply of the relevant service or the pursuit of the relevant economic activity.
2. Each party shall ensure that the procedures used by, and the decisions of, the competent authority in the licensing or authorisation process are impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and not be accountable to any person supplying the services or carrying out the economic activities for which the licence or authorisation is required.
3. In case specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. If possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.
4. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe after the date of submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing of an application.
5. The competent authority shall, within a reasonable period of time after the receipt of an application which it considers incomplete, inform the applicant, identify to the extent feasible the additional information required to complete the application, and provide the opportunity to correct deficiencies.
6. Authenticated copies should be accepted, whenever possible, in place of original documents.
7. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon formal request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against this decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.

²⁷ Licencing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

8. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

SECTION B

PROVISIONS OF GENERAL APPLICATION

Article 5.4

Mutual Recognition of Professional Qualifications

1. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.
2. The Parties shall encourage the relevant professional bodies or respective authorities as appropriate, in their respective territories to develop and provide a joint recommendation on mutual recognition of professional qualifications to the [Committee] established pursuant to Article X (Specialised Committees). Such a joint recommendation shall be supported by evidence of:
 - (a) the economic value of an envisaged agreement on mutual recognition of professional qualifications (hereinafter referred to as “Mutual Recognition Agreement”); and
 - (b) the compatibility of the respective regimes, i.e., the extent to which the criteria applied by each Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers are compatible.
3. On receipt of a joint recommendation, the [Committee] shall, within a reasonable time, review the joint recommendation with a view to determining whether it is consistent with this Agreement.
4. When, on the basis of the information provided for in paragraph 2, the joint recommendation has been found to be consistent with this Agreement, the Parties shall take necessary steps to negotiate, through their competent authorities or designees authorised by a Party, a Mutual Recognition Agreement.

SECTION C

DELIVERY SERVICES

Article 5.5

Scope and Definitions

1. This Section sets out the principles of the regulatory framework for all delivery services.
2. For the purpose of this Section:
 - (a) “delivery services” mean postal and courier/express services, which include the following activities: the collection, sorting, transport, and delivery of postal items.
 - (b) “postal item” means an item up to 31.5 kg addressed in the final form in which it is to be carried by any type of delivery service provider, whether public or private, and may include items such as a letter, parcel, newspaper, catalogue, and others.
 - (c) “express delivery services” means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt.
 - (d) “express mail services” means international express delivery services supplied through the EMS Cooperative, the voluntary association of designated postal operators under Universal Postal Union (UPU).
 - (e) “postal monopoly” means the exclusive right to supply specified delivery services within a Party’s territory pursuant to a legislative measure by the Party.
 - (f) “universal service” means the permanent provision of a delivery service of a specified quality at all points in the territory of a Party at affordable prices for all users.
 - (g) “licence” means an authorisation, granted to an individual supplier by a regulatory authority, setting out procedures, obligations and requirements specific to the delivery services sector.

Article 5.6

Universal Service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain. Each Party that maintains a universal service obligation shall administer it in a

transparent, non-discriminatory and neutral manner with regard to all suppliers subject to the obligation.

2. If a Party requires inbound Express Mail Services to be supplied on a universal service basis, it shall not accord preferential treatment to this service over other international express delivery services.

Article 5.7

Universal Service Funding

No Party may impose fees or other charges on the supply of a non-universal delivery service for the purpose of funding the supply of a universal service.²⁸

Article 5.8

Prevention of Market Distortive Practices

Each Party shall ensure that a supplier of delivery services subject to a universal service obligation or a postal monopoly does not engage in market distortive practices such as:

- (a) using revenues derived from the supply of such service to cross-subsidize the supply of an express delivery service or any non-universal delivery service, and
- (b) unjustifiably differentiating among customers such as businesses, large volume mailers or consolidators with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

Article 5.9

Licences

1. When a Party requires a licence for the provision of delivery services, it shall make publicly available:
 - (a) all licensing requirements and the period of time normally required to reach a decision concerning an application for a licence; and
 - (b) the terms and conditions of licences.
2. The procedures, obligations and requirements of a license shall be transparent, non-discriminatory and based on objective criteria.

²⁸ This paragraph does not apply to generally applicable taxation measures or administrative fees.

3. Each Party shall inform the applicant of the reasons for denial of the licence in writing. Each party shall ensure that it institutes or maintains an appeal procedure through a body that is independent from the parties involved. This body may be a court.

Article 5.10

Independence of the Regulatory Body

1. Each Party shall create or maintain a regulatory body which shall be legally distinct from and functionally independent from any supplier of delivery services. Parties that retain ownership or control of undertakings providing delivery services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
2. Each Party shall ensure that regulatory bodies perform their tasks in a transparent and timely manner. They shall ensure that regulatory bodies have adequate financial and human resources to carry out the task assigned to them.
3. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants.

SECTION D

TELECOMMUNICATIONS NETWORKS AND SERVICES

Article 5.11

Scope

This Section sets out principles of the regulatory framework for the provision of telecommunications networks and services, liberalised pursuant to Sections [...], [...] and [...] of this Chapter.

Article 5.12

Definitions

For the purposes of this Section:

- a) "associated facilities" means those services, physical infrastructures and other facilities associated with a telecommunications network and/or service which enable and/or support the provision of services via that network and/or service or have the potential to do so;
- b) "essential facilities" mean facilities of a public telecommunications network or service that:

- i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - ii) cannot feasibly be economically or technically substituted in order to provide a service;
- c) "interconnection" means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier. Services may be provided by the suppliers involved or any other supplier who has access to the network;
- d) "leased circuits" means telecommunications services or facilities, including those of a virtual nature, that set aside capacity for the dedicated use of, or availability to, a user between two or more designated points.
- e) "major supplier" means a supplier of telecommunications networks or services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications networks or services as a result of control over essential facilities or the use of its position in that market;
- f) "network element" means a facility or equipment used in supplying a public telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
- g) "non-discriminatory" means most-favoured-nation and national treatment as defined in [\[articles XX and YY\]](#), as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services in like situations.
- h) "number portability" means the ability of all subscribers of public telecommunications services who so request to retain, at the same location in the case of fixed line subscribers, the same telephone numbers without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services.
- i) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services between network termination points;
- j) "public telecommunications service" means any telecommunications service that is offered to the public generally;
- k) "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- l) "telecommunications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;

- m) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and services covered by this Section;
- n) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals, including of broadcasting signals, over telecommunications networks, including over networks used for broadcasting. Telecommunications services exclude services providing, or exercising editorial control over, content transmitted using telecommunications networks and services;
- o) "**universal service**" means the minimum set of services of specified quality that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price;
- p) "**user**" means any legal entity or natural person using a public telecommunications network or service.

Article 5.13

Telecommunications Regulatory Authority

1. Each Party shall ensure that its telecommunications regulatory authority is legally distinct and functionally independent from any supplier of telecommunications networks, telecommunications services or telecommunications equipment, and that the decisions of and the procedures used by the telecommunications regulatory authority are impartial with respect to all market participants. A Party that retains ownership or control of suppliers of telecommunications networks or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
2. The telecommunications regulatory authority shall act independently and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it under national law to enforce the obligations set out in Articles 5.15 Interconnection, 5.16 Access and Use, 5.17 Resolution of Telecommunications Disputes, 5.19 Interconnection with Major Suppliers and 5.20 Access to Major Suppliers' Essential Facilities of this Section.
3. Each Party shall ensure that the telecommunications regulatory authority has the regulatory power, as well as adequate financial and human resources, to carry out the tasks assigned to it to enforce the obligations set out in this Section. Such power shall be exercised transparently and in a timely manner. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
4. Each Party shall provide its telecommunications regulatory authority with the power to ensure that suppliers of telecommunications networks or services provide it, promptly upon request, with all the information, including financial information, which is necessary to enable the telecommunications regulatory authority to carry out its tasks

in accordance with this Section. Information requested shall be treated in accordance with the requirements of confidentiality.

5. Each Party shall ensure that a user or supplier of telecommunications networks or services affected by a decision of the telecommunications regulatory authority has the right to appeal against that decision to an appeal body that is independent of the telecommunications regulatory authority and of the parties affected by the decision. Pending the outcome of the appeal, the decision of the telecommunications regulatory authority shall stand, unless interim measures are granted in accordance with national law.

Article 5.14

Authorisation to Provide Telecommunications Services

1. Where a Party requires an authorisation for the provision of telecommunications networks or services, the Party shall make publicly available the types of services requiring authorisation, all authorisation criteria, any terms and conditions generally associated with the authorisation, and the applicable procedures. *[to be dropped if provided for in the final negotiated general Domestic Regulation provisions]*
2. Each Party shall endeavour to authorise the provision of telecommunications networks or services without a formal authorisation procedure and permitting the supplier to start providing its networks or services upon simple notification without having to wait for a decision by the telecommunications regulatory authority. Where a Party requires a formal authorisation decision, it shall state a reasonable period of time normally required to obtain such a decision, communicate this in a transparent manner and shall endeavour to ensure that the decision is taken within the stated period of time.
3. Any authorisation criteria and applicable procedures shall be as simple as possible, objective, transparent, non-discriminatory and proportionate. Any obligations and conditions imposed on or associated with an authorisation shall be non-discriminatory, transparent, proportionate and related to the services provided.
4. Each Party shall ensure that an applicant receives in writing the reasons for the denial or the revocation of an authorisation, or the imposition of supplier-specific conditions. In such cases, an applicant shall be able to seek recourse before an appeal body. *[to be dropped if provided for in the final negotiated general Domestic Regulation provisions]*
5. Administrative fees imposed on suppliers, if any, shall be objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Section²⁹.

²⁹ Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

[to be dropped if provided for in the final negotiated general Domestic Regulation provisions]

Article 5.15

Interconnection

Each Party shall ensure that a supplier of public telecommunications networks or services has the right and, upon the request of another supplier of public telecommunications networks or services, the obligation to negotiate interconnection for the purpose of providing public telecommunications networks or services.

Article 5.16

Access and Use

1. Each Party shall ensure that any service supplier of the other Party is accorded access to and use of public telecommunications networks or services on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 through 5 of this Article.
2. Each Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications service offered within or across the border of that Party, including private leased circuits, and to this end shall ensure, subject to the provisions in paragraph 5 of this Article, that such suppliers are permitted:
 - a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
 - b) to interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another service supplier; and
 - c) to use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications services to the public generally.
3. Each Party shall ensure that service suppliers of the other Party may use public telecommunications networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.
4. Notwithstanding the provisions in paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications services other than as necessary:
 - a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their services available to the public generally;
 - b) to protect the technical integrity of public telecommunications networks or services.

Article 5.17

Resolution of Telecommunications Disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations that arise from this Section, and at the request of either party involved in the dispute, the telecommunications regulatory authority issues a binding decision within a reasonable timeframe to resolve the dispute.
2. The decision issued by the telecommunications regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based and shall have the right to appeal this decision, according to Article 5.13 Telecommunications Regulatory Authority, paragraph 5 of this Section.
3. The procedure referred to in paragraphs 1 and 2 of this Article shall not preclude either party concerned from bringing an action before the courts.

Article 5.18

Competitive Safeguards on Major Suppliers

Each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers of telecommunications networks or services who, alone or together, are a major supplier, from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

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

Article 5.19

Interconnection with Major Suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or services provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:
 - a) under non-discriminatory terms and conditions (including in regard to rates, technical standards, specifications, quality and maintenance) and of a quality no less favourable than that provided for its own like services, or for like services of its subsidiaries or other affiliates;
 - b) in a timely fashion, on terms and conditions (including in relation to rates, technical standards, specifications, quality and maintenance) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
 - c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.
2. The procedures applicable for interconnection to a major supplier shall be made publicly available.
3. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers as appropriate.

Article 5.20

Access to Major Suppliers' Essential Facilities

Each Party shall ensure that a major supplier in its territory makes its essential facilities available to suppliers of telecommunications networks or services on reasonable and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority. The major supplier's essential facilities may include, inter alia, network elements, leased circuits services and associated facilities.

Article 5.21

Scarce Resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and in pursuit of general interest objectives. Procedures, and conditions and obligations

attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.

2. The current use of allocated frequency bands shall be made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.
3. A Party's measures allocating and assigning spectrum and managing frequency are not measures that are per se inconsistent with [Article \[...\] \(market access\)](#). Accordingly, each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with Sections Cross-border Trade in Services, Establishment, Digital Trade, including exceptions of this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

Article 5.22

Number Portability

Each Party shall ensure that suppliers of public telecommunications services provide number portability on reasonable terms and conditions.

Article 5.23

Universal Service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.
2. Universal service obligations will not be regarded per se as anti-competitive, provided they are administered in a proportionate, transparent, objective and non-discriminatory way. The administration of such obligations shall be neutral with respect to competition and not be more burdensome than necessary for the kind of universal service defined by the Party.
3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or services. The designation shall be made through an efficient, transparent and non-discriminatory mechanism.
4. Where a Party decides to compensate the universal service suppliers, it shall ensure that such compensation does not exceed the net cost caused by the universal service obligation.

Article 5.24

Confidentiality of Information

1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements pursuant to Articles 5.15 Interconnection, 5.16 Access and Use, 5.19 Interconnection with Major Suppliers and 5.20 Access to Major Suppliers' Essential Facilities of this Section use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
2. Each Party shall ensure the confidentiality of telecommunications and related traffic data transmitted in the use of public telecommunications networks or services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

Article 5.25

Foreign Shareholding

With regard to the provision of telecommunications networks or services through commercial presence and notwithstanding [Articles \[...\] \(market access, national treatment\)](#), no Party shall impose joint venture requirements or limit the participation of foreign capital in terms of maximum percentage limits on foreign shareholding or the total value of individual or aggregate foreign investment.

SECTION E

FINANCIAL SERVICES

Article 5.26

Scope and Definitions

1. This Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Chapters II Section A, III and IV of this Title.
2. For the purpose of this Chapter and of Chapters II Section A, III and IV of this Title
 - (a) “financial service” means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:
 - (i) insurance and insurance-related services
 - (A) direct insurance (including co-insurance):

- (aa) life;
 - (bb) non-life;
 - (B) reinsurance and retrocession;
 - (C) insurance inter-mediation, such as brokerage and agency; and
 - (D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
- (ii) banking and other financial services (excluding insurance):
- (A) acceptance of deposits and other repayable funds from the public;
 - (B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
 - (C) financial leasing;
 - (D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
 - (E) guarantees and commitments;
 - (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (aa) money market instruments (including cheques, bills, certificates of deposits);
 - (bb) foreign exchange;
 - (cc) derivative products including, but not limited to, futures and options;
 - (dd) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (ee) transferable securities;
 - (ff) other negotiable instruments and financial assets, including bullion;
 - (G) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
 - (H) money broking;

- (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (K) provision and transfer of financial information, and financial data processing and related software;
 - (L) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (A) through (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) “financial service supplier” means any natural or juridical person of a Party that seeks to provide or provides financial services. The term “financial service supplier” does not include a public entity.
- (c) “public entity” means:
- (i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
- (d) “new financial service” means a service of a financial nature including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.
- (e) “self-regulatory organisation” means any non-governmental body, any securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central, regional or local governments or authorities, where applicable.

Article 5.27

Prudential Carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
 - (b) ensuring the integrity and stability of a Party's financial system.
2. The measures referred to in paragraph 1 shall not be more burdensome than necessary to achieve their aim.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

Article 5.28

Effective and Transparent Regulation

1. Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

On the request of an applicant, the concerned Party shall inform the applicant of the status of its application. If the concerned Party requires additional information from the applicant, it shall notify the applicant without undue delay.

2. Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, inter alia, those adopted by the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), the International Organisation of Securities Commissions (IOSCO), the Financial Action Task Force (FATF), and the Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organisation for Economic Cooperation and Development (OECD).

Article 5.29

Financial Services new to the Territory of a Party

Each Party shall permit a financial service supplier of the other Party to provide any new financial service that the former Party would permit its own financial service suppliers to provide in accordance with its domestic law in like situations, provided that the introduction of the new financial services does not require a new law or modification of an existing law. A Party may determine the institutional and legal form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

Article 5.30

Placeholder on Data Processing

Article 5.31

Specific Exceptions

1. Nothing in this Title shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Title shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
4. The provisions of this Article shall not be construed as limiting the rights of investors and covered investments under Chapter II Section B (Investment Protection) of this Title.

Article 5.32

Self-regulatory Organisations

When a Party requires membership of, participation in, or access to, any self-regulatory organization in order for financial service suppliers of the other Party to supply financial services in or into the territory of the first Party, the Party shall ensure observance of the obligations under Articles 2.3 (National Treatment) and 2.4 (Most Favored Nation Treatment) as well as 3.3 (National Treatment) [and 3.4 (Most Favored Nation Treatment)].

Article 5.33

Clearing and Payment Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available

in the normal course of ordinary business. This paragraph shall not confer access to the Party's lender of last resort facilities.

SECTION F

INTERNATIONAL MARITIME TRANSPORT SERVICES

Article 5.34

Scope, Definitions and Principles

1. This Section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Chapters II Section A, III and IV of this Title.

2.

For the purpose of this Section and Chapters II Section A, III and IV of this Title:

- a) 'international maritime transport services' means the transport of passengers and/or cargo by sea-going vessels between a port of a Party and a port of the other Party or of a third country. This includes the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but not the right to provide such other transport services.
- b) 'door-to-door or multimodal transport operations' means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document.
- c) 'international cargo' means cargo transported between a port of one Party and a port of the other Party or of a third Party, or between a port of one Member State of the European Union and a port of another Member State of the European Union.
- d) 'maritime auxiliary services' means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services;
- e) 'maritime cargo handling services' means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
 - i) the loading or discharging of cargo to or from a ship;
 - ii) the lashing or unlashings of cargo;
 - iii) the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- f) 'customs clearance services' (alternatively 'customs house brokers' services) means activities consisting in carrying out on behalf of another party customs formalities

concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;

- g) 'container station and depot services' means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing or stripping, repairing and making them available for shipments;
- h) 'maritime agency services' means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
 - i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - j) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
- k) 'freight forwarding services' means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;
- l) 'feeder services' means the pre- and onward transportation by sea, between ports located in a Party, of international cargo, notably containerised, *en route* to a destination outside the territory of that Party.

3. In view of the existing levels of liberalisation between the Parties in international maritime transport:

- a) the Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;
- b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships, with regard to, *inter alia*, access to ports, use of infrastructure and services of ports, and use of maritime auxiliary services, as well as related fees and charges, customs facilities and assignment of berths and facilities for loading and unloading.

4. In applying the principles referred to in subparagraphs 3 (a) and 3 (b) , the Parties shall:

- a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and

- b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures or administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.
- 5. Each Party shall permit international maritime service suppliers of the other Party to have an enterprise established and operating in its territory in accordance with the conditions inscribed in its Schedule of Specific Commitments.
- 6. The Parties shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.
- 7. Each Party shall permit the international maritime transport service suppliers of the other party to re-position owned or leased empty containers which are not being carried as cargo against payment, between ports of [name of the country] or between ports of a Member State of the European Union.
- 8. Each Party, subject to the authorisation by the competent authority where applicable, shall permit international maritime transport service suppliers of the other Party to provide feeder services between their national ports.

CHAPTER VI

CORPORATE GOVERNANCE

[THE EU RESERVES THE RIGHT TO PROPOSE PROVISIONS ON CORPORATE GOVERNANCE AT A LATER STAGE]

NOTES:

The EU reserves the right to table in a dedicated chapter general exceptions, security exceptions and exceptions relating to taxation. These exceptions will also apply to this Title.

Articles on capital movements and payments, restrictions in case of balance of payments and external financial difficulties or safeguards for the operation of the economic and monetary union, in the case of the European Union, will be inserted in the general/horizontal part of the Agreement and will apply to this Title. Paragraph 3 of Article 2.13 might be reviewed/deleted if it overlaps with these provisions.