



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.04.1996
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96/ 0105 (CNS)

Proposal for a

COUNCIL DECISION

concerning
the conclusion on behalf of the European Community,
as regards matters within its competence,
of the results of the WTO negotiations
on financial services and on movement of natural persons

(presented by the Commission)

Explanatory Memorandum

By its decision of 22 December 1994¹, the Council of the European Union approved the Final Act embodying the results of the Uruguay Round of multilateral trade negotiations concluded at the end of December 1993. It thereby approved the Marrakesh Agreement establishing the World Trade Organization and its related agreements, among which the General Agreement on Trade in Services, as well as the Ministerial Declarations and Decisions and the Understanding on Commitments in Financial Services featured in the Final Act.

The Ministerial Decision on Financial Services stated that at the conclusion of a period ending no later than six months after the date of entry into force of the WTO Agreement, which took place on 1 January 1995, WTO Members were free to improve, modify or withdraw all or part of their commitments in the financial services sector without offering compensation. By the same deadline of 30 June 1995, WTO members were to finalize their position relating to MFN exemptions in this sector.

The Ministerial Decision on Negotiations on Movement of Natural Persons stated that negotiations on further liberalisation of movement of natural persons for the purpose of supplying services continued with a view to allowing the achievement a higher level of commitments by participants. These negotiations were to be finalised no later than six months after the date of entry into force of the WTO Agreement.

On 29 June, at the end of the negotiating process, while major WTO Members, including the European Community and its Member States, had submitted revised schedules of commitments on financial services to become unconditional MFN-based commitments, the United States unexpectedly decided to withdraw most of its offer on financial services by taking a blanket MFN exemption. In these circumstances, it was proposed to prolong the negotiations for one month to allow countries, including the United States, to confirm whether or not they were wishing to maintain their best offers.

In parallel, the negotiations on movement of persons were prolonged for one month.

The Second Protocol and related Decisions on financial services as well as the Third Protocol and related Decision on movement of natural persons were adopted by the WTO Services Council of 21 July 1995.

The Council in its conclusions of 26 July 1995 authorised the Commission to confirm, on behalf of the European Community and its Member States, the offer submitted to the WTO on financial services on 21 July 1995 and the negotiated improvements to their existing commitments on movement of natural persons.

¹JO n°336 of 23rd December 1994, p.1.

The Council also authorized the Commission on the same date to approve the Decision of the Committee on Trade in Financial Services adopting the Second Protocol to the GATS, the Decision of the Council for Trade in Services on Financial Services, the Second Decision of the Council for Trade in Services on Financial Services and the Decision of the Council for Trade in Services on movement of natural persons.

On 28 July 1995, the following WTO Members confirmed that they would maintain their best offers on new commitments: besides the European Community and its Member States, these countries are Australia, Brazil, Canada, Chile, the Czech Republic, the Dominican Republic, Egypt, Hong Kong, Hungary, India, Indonesia, Japan, Korea, Kuwait, Malaysia, Mexico, Morocco, Norway, Pakistan, Philippines, Poland, Singapore, the Slovak Republic, South Africa, Switzerland, Thailand, Turkey, Venezuela. These countries will be signatories to the Second Protocol to the GATS, the legal instrument to which they will attach their new schedules and MFN exemption lists. The US did not change the position stated on 30 June 1995 and thus applies a reduced level of commitments and a broad MFN exemption. Other WTO member countries, such as Argentina and New Zealand, will continue to apply their April 1994 schedules.

On 28 July 1995, the following WTO Members confirmed submission of their improved commitments on movement of natural persons: Australia, Canada, the European Community and its Member States, India, Norway and Switzerland.

Negotiations were therefore concluded on 28 July 1995.

The individual schedules of commitments to be annexed respectively to the Second and Third Protocol to the General Agreement on Trade in Services were technically verified and approved by the WTO Council for Trade in Services in Geneva on 4 October 1995.

Both Protocols are open for acceptance, by signature or otherwise, by Members concerned until 30th June 1996.

Negotiations were conducted in the light of the guidelines adopted by the Council of 6 March 1995, as interpreted by the Council on 17 July 1995.

The overall level of commitments both on market access and national treatment reached upon adoption by WTO of the interim agreement on 28 July 1995 is globally better than that obtained at the end of December 1993. It allows EU financial services and insurance industries to benefit from greater legal certainty and predictability than previously available, and constitutes a basis on which to build further market-opening measures in the future.

An important objective of the Community and its Member States was to achieve the multilateralisation of Japan/US measures on insurance and financial services so that the dispute settlement procedures could be invoked if EU financial services providers were discriminated against, compared with US suppliers. In response, Japan confirmed in an open letter to the Director General of the WTO that all the benefits of the Measures on insurance and financial services are multilaterally applied on an MFN basis consistently with WTO rules.

The contribution of the European Community and its Member States to a satisfactory conclusion of the negotiations on the movement of persons supplying services was also important. It shows that the interests of all Members of the WTO are taken into account by the EU. Moreover, the outcome of these negotiations constitutes a more balanced level of commitments in that area.

The Commission therefore recommends that the Council of the European Union adopt the attached decision concerning the conclusion of the results of the extended WTO negotiations on financial services and on movement of natural persons.

Council Decision

of...

concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the WTO negotiations on financial services and on movement of natural persons

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 54, 57, 63, 66, 73C (2), 100, 100A and 113, in conjunction with the second sentence of Article 228 (2) and the first sub-paragraph of Article 228 (3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the European Parliament,

Whereas the Marrakesh Agreement establishing the World Trade Organisation and its related agreements as well as the Ministerial Decisions and Declarations and the Understanding on Commitments in Financial Services were approved by a Council decision of 22 December 1994⁽¹⁾;

Whereas the overall commitments on financial services negotiated by the Commission, on behalf of the European Community and its Member States, constitutes a satisfactory and balanced outcome for the interim period concerned;

Whereas some commitments were negotiated by the Commission on behalf of the European Community and its Member States on movement of natural persons for the purpose of supplying services;

Whereas on 26 July 1995 the Council authorized the Commission to agree, on behalf of the European Community and its Member States, to the Decision of the Committee on Trade in Financial Services adopting the Second Protocol to the General Agreement on Trade in Services, the Decision of the Council for Trade in Services on Commitments on Financial Services and the Second Decision of the Council for Trade in Services on Financial services as well as the Decision of the Council for Trade in Services on movement of natural persons commitments ;

¹ JO n°336 23 December 1994, p.1

Whereas the competence of the Community to conclude international agreements does not derive only from explicit conferral by the Treaty but may also derive from other provisions of the Treaty and from acts adopted pursuant to those provisions by Community institutions;

Whereas where Community rules have been adopted in order to achieve the aims of the Treaty, Member States may not, outside the framework of the common institutions, enter into commitments liable to affect those rules or alter their scope;

Whereas some commitments on financial services fall within the competence of the Community under Article 113 of the Treaty; whereas, furthermore, other commitments on financial services as well as the commitments on movement of natural persons affect Community rules adopted on the basis of Articles 54, 57, 63, 66, 100 and 100A, and may therefore only be entered into by the Community alone;

Whereas, the use of Article 73C (2) of the Treaty as a legal basis for this Decision is required since the results of the WTO negotiations on financial services and on movement of natural persons impose certain obligations on the Community regarding the movement of capital and payments between the Community and third countries Members of the WTO;

Whereas, by its nature, the Agreement establishing the World Trade Organisation and the Protocols to the General Agreement on Trade in Services, are not susceptible to being directly invoked in Community or Member States courts,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Second Protocol to the General Agreement on Trade in Services concerning financial services is hereby approved on behalf of the European Community with regard to that portion of it which falls within the competence of the European Community:
2. The text of the Second Protocol as well as the following decisions are attached to this Decision :
 - the Decision of the Committee on Trade in Financial Services adopting the Second Protocol to the General Agreement on Trade in Services,
 - the Decision of the Council for Trade in Services on Commitments on Financial Services,
 - the Second Decision of the Council for Trade in Services on Financial services.
3. The President of the Council is hereby authorized to designate the person empowered to sign the Second Protocol to the General Agreement on Trade in Services in order to bind the European Community with regard to that portion of the Protocol falling within its competence.

Article 2

1. The Third Protocol to the General Agreement on Trade in Services concerning movement of natural persons is hereby approved on behalf of the European Community with regard to that portion of it which falls within the competence of the European Community:
2. The text of the Third Protocol as well as the Decision of the Council for Trade in Services on movement of natural persons commitments are attached to this Decision.
3. The President of the Council is hereby authorized to designate the person empowered to sign the Third Protocol to the General Agreement on Trade in Services in order to bind the European Community with regard to that portion of the Protocol falling within its competence.

Done at Brussels, ...

For the Council
The President

Trade in Services

THIRD PROTOCOL TO THE
GENERAL AGREEMENT ON TRADE IN SERVICES

Members of the World Trade Organization whose Schedules of Specific Commitments to the General Agreement on Trade in Services relating to movement of natural persons are annexed to this Protocol,

Having carried out negotiations under the terms of the Ministerial Decision on Negotiations on Movement of Natural Persons adopted at Marrakesh on 15 April 1994,

Having regard to the results of such negotiations,

Having regard to the Decision on the Movement of Natural Persons adopted by the Council for Trade in Services on 30 June 1995,

Agree as follows:

1. The commitments on Movement of Natural Persons annexed to this Protocol relating to a Member shall, upon the entry into force of this Protocol for that Member, replace or supplement the relevant entries on movement of natural persons in the Schedule of Specific Commitments of that Member.
2. This Protocol shall be open for acceptance, by signature or otherwise, by Members concerned until 30th June 1996.
3. This Protocol shall enter into force on the 30th day after 1st January 1996 for those Members which have accepted it by that date, and for those accepting it after that date, which date shall not be beyond 30th June 1996, it shall enter into force on the 30th day following the date of each acceptance. If a Member whose schedule is annexed to this Protocol does not accept it by that date, the matter shall be referred to the Council for Trade in Services for consideration and appropriate action.
4. This Protocol shall be deposited with the Director-General of the World Trade Organization. The Director-General shall promptly furnish to each Member a certified copy of this Protocol and notifications of acceptances thereof pursuant to paragraph 3.
5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this -- day of [month] one thousand nine hundred and ninety-five, in a single copy in English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

Trade in Services

DECISION ON MOVEMENT OF NATURAL PERSONS COMMITMENTS

Adopted by the Council for Trade in Services on 21 July 1995

The Council for Trade in Services,

Having regard to the results of the negotiations conducted under the terms of the Decision on Movement of Natural Persons adopted at Marrakesh on 15th April 1994,

Having regard to the Decision on the Movement of Natural Persons adopted by the Council for Trade in Services on 30 June 1995,

Decides as follows:

1. To adopt the text of the "Third Protocol to the General Agreement on Trade in Services".
2. Commencing immediately and continuing until the date of entry into force of the Third Protocol to the General Agreement on Trade in Services, Members concerned shall, to the fullest extent consistent with their existing legislation, not take measures which would be inconsistent with their undertakings resulting from these negotiations.
3. The Council for Trade in Services shall monitor the acceptance of the Protocol by Members concerned and shall, at the request of a Member, examine any concerns raised regarding the application of paragraph 2 above.

Trade in Services

SECOND PROTOCOL TO THE
GENERAL AGREEMENT ON TRADE IN SERVICES

Members of the World Trade Organization (hereinafter referred to as the "WTO") whose Schedules of Specific Commitments and Lists of Exemptions from Article II of the General Agreement on Trade in Services concerning financial services are annexed to this Protocol (hereinafter referred to as "Members concerned"),

Having carried out negotiations under the terms of the Ministerial Decision on Financial Services adopted at Marrakesh on 15 April 1994,

Having regard to the Second Annex on Financial Services, and to the Decision on the application of that Annex adopted by the Council for Trade in Services on 30 June 1995,

Agree as follows:

1. A Schedule of Specific Commitments and a List of Exemptions from Article II concerning financial services annexed to this Protocol relating to a Member shall, upon the entry into force of this Protocol for that Member, replace the financial services sections of the Schedule of Specific Commitments and the List of Article II Exemptions of that Member.
2. This Protocol shall be open for acceptance, by signature or otherwise, by the Members concerned until 30 June 1996.
3. This Protocol shall enter into force on the 30th day following the date of its acceptance by all Members concerned. If by 1 July 1996 it has not been accepted by all Members concerned, those Members which have accepted it before that date may, within a period of 30 days thereafter, decide on its entry into force.
4. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish to each Member of the WTO a certified copy of this Protocol and notifications of acceptances thereof pursuant to paragraph 3.
5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this --- day of [month] one thousand nine hundred and ninety-five, in a single copy in English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the Schedules annexed hereto.

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Trade in Services

DECISION ADOPTING THE SECOND PROTOCOL TO THE
GENERAL AGREEMENT ON TRADE IN SERVICES

Adopted by the Committee on Trade in Financial Services on 21 July 1995

The Committee on Trade in Financial Services,

Having regard to the results of the negotiations conducted under the terms of the Decision on Financial Services adopted at Marrakesh on 15 April 1994,

Having regard to the Second Annex on Financial Services, and to the Decision on the application of that Annex adopted by the Council for Trade in Services on 30 June 1995,

Decides as follows:

1. To adopt the text of the "Second Protocol to the General Agreement on Trade in Services".
2. Commencing immediately and continuing until the date of entry into force of the Second Protocol to the General Agreement on Trade in Services, Members concerned shall, to the fullest extent consistent with their existing legislation, not take measures which would be inconsistent with their undertakings resulting from these negotiations.
3. The Committee on Trade in Financial Services shall monitor the acceptance of the Protocol by Members concerned and shall, at the request of a Member, examine any concerns raised regarding the application of paragraph 2 above.

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Trade in Services

DECISION ON COMMITMENTS IN FINANCIAL SERVICES

Adopted by the Council for Trade in Services on 21 July 1995

The Council for Trade in Services,

Having regard to the Second Annex on Financial Services, and the Second Protocol to the General Agreement on Trade in Services,

Having regard to the Decision on the Application of the Second Annex on Financial Services adopted by the Council for Trade in Services on 30 June 1995,

Noting the results of the negotiations carried out under the terms of the Decision on Financial Services adopted at Marrakesh on 15 April 1994,

Decides as follows:

1. If the Second Protocol to the General Agreement on Trade in Services (GATS) does not enter into force in accordance with paragraph 3 therein:
 - (a) Notwithstanding Article XXI of the GATS, a Member may during a period of sixty days beginning on 1 August 1996, modify or withdraw all or part of the Specific Commitments on Financial services inscribed in its Schedule.
 - (b) Notwithstanding Article II of the GATS and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during the same period referred to in paragraph 1, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the GATS.
2. The Committee on Trade in Financial Services shall establish any procedures necessary for the implementation of paragraph 1.

Trade in Services

SECOND DECISION ON FINANCIAL SERVICES

Adopted by the Council for Trade in Services on 21 July 1995

The Council for Trade in Services,

Having regard to the Second Annex on Financial Services,

Noting the results of the negotiations carried out under the terms of the Decision on Financial Services adopted at Marrakesh on 15 April 1994,

Having regard to the Decision on the Application of the Second Annex on Financial Services adopted by the Council for Trade in Services on 30 June 1995,

Decides as follows:

1. Notwithstanding Article XXI of the General Agreement on Trade in Services (GATS), a Member may during a period of sixty days beginning on 1 November 1997, modify or withdraw all or part of the Specific Commitments on Financial Services inscribed in its Schedule.
2. Notwithstanding Article II of the GATS and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during the same period referred to in paragraph 1, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the GATS.
3. The Committee on Trade in Financial Services shall oversee any negotiations that may take place prior to the date specified in paragraph 1. It shall also establish any procedures necessary for the application of paragraphs 1 and 2.
4. The application of this Decision shall be contingent upon the entry into force of the Second Protocol to the General Agreement on Trade in Services.

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