

(on 2014-06-19)



# Secret Trade in Services Agreement (TISA) - Financial Services Annex

## 2014-06-19

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dokumente-internationales-handelsabkommen-tisa-gefaehrdet-datenschutz-1.2007052)

Greece - Ta Nea

(http://www.tanea.gr/news/world/article/5133005/ta-

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Today, WikiLeaks released the secret draft text for the Trade in Services Agreement (TISA) Financial Services Annex, which covers 50 countries and 68.2%<sup>1</sup> of world trade in services. The US and the EU are the main proponents of the agreement, and the authors of most joint changes, which also covers cross-border data flow. In a significant anti-transparency manoeuvre by the parties, the draft has been classified to keep it secret not just during the negotiations but for five years after the TISA enters into force.

Despite the failures in financial regulation evident during the 2007-2008 Global Financial Crisis and calls for improvement of relevant regulatory structures<sup>2</sup>, proponents of TISA aim to further deregulate global financial services markets. The draft Financial Services Annex sets rules which would assist the expansion of financial multi-nationals – mainly headquartered in New York, London, Paris and Frankfurt – into other nations by preventing regulatory barriers. The leaked draft also shows that the US is particularly keen on boosting cross-border data flow, which would allow unlimited exchange of personal and financial data.

Read the full press release here. (/tisa-financial/press.html)

[1] Swiss National Center for Competence in Research: A Plurilateral Agenda for Services?: Assessing the Case for a Trade in Services Agreement (http://www.wti.org/fileadmin/user\_upload/nccr-trade.ch/wp2/publications/TISA\_P\_Sauve.pdf), Working Paper No. 2013/29, May 2013, p. 10.

[2] For example, in June 2012 Ecuador tabled a discussion (https://www.citizen.org/documents/fact-sheet-ecuador-june-2012-proposal.pdf) on re-thinking regulation and GATS rules; in September 2009 the Commission of Experts on Reforms of the International Monetary and Financial System, convened by the

<p>gia-to-oikonomiko-mellon-toy-planhth/)</p> <p>Iceland - Kjarninn (<a href="http://kjarninn.is/leyniskjal-tisa-samkomulagid">http://kjarninn.is/leyniskjal-tisa-samkomulagid</a>)</p> <p>Italy - L'Espresso (<a href="http://espresso.repubblica.it/inchieste/2014/06/19/news/wikileaks-ecco-l-accordo-segreto-per-il-liberismo-selvaggio-1.170088">http://espresso.repubblica.it/inchieste/2014/06/19/news/wikileaks-ecco-l-accordo-segreto-per-il-liberismo-selvaggio-1.170088</a>)</p> <p>Italy - La Repubblica (<a href="http://espresso.repubblica.it/inchieste/2014/06/19/news/wikileaks-ecco-l-accordo-segreto-per-il-liberismo-selvaggio-1.170088">http://espresso.repubblica.it/inchieste/2014/06/19/news/wikileaks-ecco-l-accordo-segreto-per-il-liberismo-selvaggio-1.170088</a>)</p> <p>Mexico - La Jornada (<a href="http://www.jornada.unam.mx/">http://www.jornada.unam.mx/</a>)</p> <p>Norway - Dagbladet (<a href="http://www.dagbladet.no/2014/06/19/nyheter/wikileaks/tisa/handelsavtale/wto/33931260/">http://www.dagbladet.no/2014/06/19/nyheter/wikileaks/tisa/handelsavtale/wto/33931260/</a>)</p> <p>Turkey - Punto24 (<a href="http://platform24.org/">http://platform24.org/</a>)</p> <p>Turkey - Tempo24 (<a href="http://t24.com.tr/haber/wikileaks-sizdirdi-iste-gizli-ticaret-gorusmelerinin-tam-metni,261704">http://t24.com.tr/haber/wikileaks-sizdirdi-iste-gizli-ticaret-gorusmelerinin-tam-metni,261704</a>)</p>	<p>President of the United Nations and chaired by Joseph Stiglitz, released its final report (<a href="https://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf">https://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf</a>), stating that "All trade agreements need to be reviewed to ensure that they are consistent with the need for an inclusive and comprehensive international regulatory framework which is conducive to crisis prevention and management, counter-cyclical and prudential safeguards, development, and inclusive finance."</p> <hr/> <p>Click on the partners listed to the left for their articles on this TISA Financial Services Annex.</p> <p>Download the full secret TISA Financial Services Annex as PDF here (<a href="/tisa-financial/WikiLeaks-secret-tisa-financial-annex.pdf">/tisa-financial/WikiLeaks-secret-tisa-financial-annex.pdf</a>).</p> <p>Download Analysis Article of secret TISA Financial Services Annex as PDF here (<a href="/tisa-financial/Analysis-of-secret-tisa-financial-annex.pdf">/tisa-financial/Analysis-of-secret-tisa-financial-annex.pdf</a>) or online here (<a href="/tisa-financial/analysis.html">/tisa-financial/analysis.html</a>).</p>
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## WikiLeaks Release of Secret Trade in Services Agreement (TISA)

### Financial Services Annex Consolidated Text (April 14, 2014)

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LIMITED

## **Annex [X]: Financial Services**

*Consolidation of text proposals as of 14 April 2014*

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Reason: 1.4(b)  
Declassify on: **Five years from entry into force of the TISA agreement or, if no agreement enters into force, five years from the close of the negotiations.**

\* This document must be protected from unauthorized disclosure, but may be mailed or transmitted over unclassified e-mail or fax, discussed over unsecured phone lines, and stored on unclassified computer systems. It must be stored in a locked or secured building, room, or container.

## **Annex [X]: Financial Services**

*\*Working consolidated draft among the proponents as of 14 April 2014; draft is without prejudice to further proposals or positions of the proponents.*

### **Article X.1: Scope**

1. This section/Annex applies to measures affecting the supply of financial services **[TR: subject to any conditions, reservations and qualifications inscribed in its Schedule of specific commitments.]**
2. For the purposes of subparagraph 3(b) of Article I-1 of the Agreement, “services supplied in the exercise of governmental authority” means the following:

- (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
  - (b) activities forming part of a statutory system of social security or public retirement plans; and
  - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Party or its public entities.
3. For the purposes of subparagraph 3(b) of Article I-1 of the Agreement, if a Party allows any of the activities referred to in subparagraphs (b) or (c) of paragraph 2 of this Article to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.
4. Subparagraph 3(c) of Article I-1 of the Agreement shall not apply to services covered by this Annex.

## **Article X.2: Definitions**

For purposes of this Annex/section:

- (a) A financial service is any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services and all banking and other financial services (excluding insurance). Financial services include the following activities:

### *Insurance and insurance-related services*

- (i) direct insurance (including co-insurance):

- (A) life;
- (B) non-life;

- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency;
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

### *Banking and other financial services (excluding insurance)*

- (v) acceptance of deposits and other repayable funds from the public;
- (vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travelers checks and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (A) money market instruments (including checks, bills, certificates of deposits);
  - (B) foreign exchange;
  - (C) derivative products including, but not limited to, futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

- (E) transferable securities;
  - (F) other negotiable instruments and financial assets, including bullion;
  - (xi) 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;
  - (xii) money broking;
  - (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depositary and trust services;
  - (xiv) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
  - (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
  - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) A **“financial service supplier”** means any natural or juridical person of a Party wishing to supply or supplying financial services, but 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) **“commercial presence”** means an enterprise within a Party’s territory for the supply of financial services and includes wholly or partly owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations;
- (e) **[PA: “financial institution”** means a financial intermediary or other commercial presence that is authorized to do business and regulated or supervised as a financial institution under the domestic law of the Party in whose territory it is located;]
- (f) A **“new financial service”** is 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 **[PA: another Party]**.
- (g) **[PA: “self-regulatory organization”** means a non-governmental body that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions, including a securities or futures exchange or market, clearing agency, or other organization or association.]
- (h) **[EU, US: A “non-resident supplier of financial services”** is a financial service supplier of a Party which supplies a financial service into the territory of another Party from an establishment located in the territory of another Party, regardless of whether such a financial services supplier has or has not a commercial presence in the territory of the Party in which the financial service is supplied.]

## **[US: Article X.3: Scheduling Financial Services Commitments]**

### *Market Access*

1. Each Party shall **[HKC: subject to any conditions, reservations, and qualifications inscribed in the Schedule]** inscribe in its Schedule, pursuant to Article I-3 of the Agreement, a commitment with respect to
  - (a) the supply of financial services through commercial presence; and
  - (b) the supply of financial services listed in Article X.8 [cross-border trade] with respect to the supply of a financial service from the territory of one Party into the territory of any other Party, or in the territory of one Party to the service consumer of any other Party.

### *National Treatment*

2. With respect to the supply of a financial service from the territory of one Party into the territory of any other Party, or in the territory of one Party to the service consumer of any other Party,
  - (a) Article I-4 (National Treatment) of the Agreement shall apply to only the supply of financial services listed in Article X.8 [cross-border trade], unless a Party otherwise specifies in its Schedule; and
  - (b) paragraph 3 of Article II-2 of the Agreement shall not apply.]

## **[EU, US: Article X.4: Standstill]**

**[EU, US: Any conditions, limitations and qualifications to the commitments]** **[EU: according to Articles 6, 7, 8 and 9 (Financial services purchased by public entities, commercial presence, cross-border Trade, Temporary Entry of Personnel)]** **[US: in Articles 6, 7 and 8(Financial services purchased by public entities, commercial presence, cross-border trade)]** **[EU, US: shall be limited to existing non-conforming measures.]**

**[AU: The conditions and qualifications on commitments]** **[EU: according to Articles 6, 7, 8 and 9]** **[US: in Articles 6, 7 and 8]** shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of such measures.]

## **Article X.5: Monopoly Rights**

**[EU, US: In addition to (Article XX/monopolies and exclusive service suppliers) of the Agreement, the following shall apply:**

Each Party shall list in its Schedule pertaining to financial services existing monopoly rights and shall endeavor to eliminate them or reduce their scope. Notwithstanding paragraph 2 of Article 1 of this Annex/section, this paragraph applies to the activities referred to in paragraph 2(c) of Article 1 of this Annex/section.]

## **Article X.6: Financial Services Purchased by Public Entities**

[EU, US: Notwithstanding [Section/Article X] of the Agreement [on government procurement] and subject to any conditions, limitations and qualifications that a Party shall set out in its Schedule in accordance with Article X.4 (Standstill), each Party shall ensure that financial service suppliers of any other Party established in its territory are accorded most-favored-nation treatment and national treatment as regards the purchase or acquisition of financial services by public entities of the Party in its territory.]

## **Article X.7: Commercial Presence**

1. [EU, US: Subject to any conditions, limitations and qualifications that a Party shall set out in its Schedule in accordance with Article X.4 (Standstill),] [AU: Subject to any terms limitations, conditions, and qualifications that the Party shall set out in its Schedule,] [E][e]ach Party shall grant financial service suppliers of any other Party the right to establish or expand within its territory, including through the acquisition of existing enterprises, [PA: and without the imposition of numerical restrictions, <sup>1</sup>] a commercial presence.

1bis. A Party may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence in so far as they do not circumvent the Party's obligation under paragraph 1 and they are consistent with the other obligations of this Agreement [PA: in particular:

- (a) impose a term or condition on the establishment of additional commercial presences and determine the institutional and juridical form to be used to supply a specified financial service or to carry out of a specified activity;
  - (b) prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to a complete financial services sub-sector such as banking; or
  - (c) require that a financial service supplier of another Party be engaged in the business of providing financial services in the territory of that other Party, without prejudice to other forms of prudential regulation.]
2. [PA: Each Party shall permit financial service suppliers of any other Party that owns or controls a financial institution in the Party's territory to establish in that territory as many additional commercial presences as may be necessary for the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional commercial presences.]

## **Article X.8: Cross-Border Trade**

1. [EU, US: Subject to any conditions, limitations and qualifications that a Party shall set out in its Schedule in accordance with Article X.4 (Standstill),] [AU: Subject to any terms limitations, conditions and qualifications that the Party shall set out in its Schedule,] [e][E]ach Party shall permit non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, [PA, EU, Norway: and under terms and conditions that accord national treatment,]: the following services:

- (a) insurance of risks relating to:



- (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the **[Norway: passengers and]** goods being transported, the vehicle transporting the **[Norway: passengers and]** goods and any liability arising therefrom;
  - (ii) **[Norway: ocean-going fishing vessels];**
  - (iii) **[Norway: exploration, development, production activities, and properties in the offshore energy sector by large customers <sup>2</sup>];** and
  - (iv) goods in international transit<sup>1</sup>;
  - (b) reinsurance and retrocession;
  - (c) services auxiliary to insurance as referred to in subparagraph (a)(iv) of Article 2 of the Annex;
  - (d) provision and transfer of financial information and financial data processing **[US: and related software]** as referred to in subparagraph (a) (xv) and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in subparagraph (a)(xvi), both of Article 2 of the Annex.
  - (e) **[US, CA, CH: investment advice to a collective investment scheme located in the Party's territory;]**
  - (f) **[US, CH: portfolio management services to a collective investment scheme located in the Party's territory, excluding**
    - (i) trustee services;
    - (ii) custodial services and execution services that are not related to managing a collective investment scheme.<sup>3</sup>]
  - (g) **[US: electronic payment services for payment card transactions <sup>4</sup> into its territory from the territory of another Party by a person of that Party. For the purposes of this subsection:**
    - (i) a "payment card" includes a credit card, charge card, debit card, check card, automated teller machine ("ATM") card, prepaid card, and other similar card or access device, and the unique account number associated with that card or access device; and
    - (ii) "electronic payment services for payment card transactions" does not include the transfer of funds to and from transactors' accounts. Furthermore, "electronic payment services for payment card transactions" includes only those payment network services that use proprietary networks to process payment transactions.]
2. **[PA: Each Party shall permit a person located in its territory, and its nationals wherever located, to purchase a financial service from a cross-border financial service supplier of another Party located in the territory of another Party.]**
- [US, EU: Subject to any conditions, limitations and qualifications that a Party shall set out in its Schedule in accordance with Article X.4 (Standstill),]** **[EU, Norway, US: [e] [E]ach Party shall permit its residents to purchase in the territory of any other Party the financial services indicated in:**
- (a) paragraph 1(a);
  - (b) paragraphs 1(b) and 1(c); and
  - (c) subparagraphs (a)(v) to (xvi) of Article X.2.]
3. **[PA: Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of another Party and of financial instruments.]**

## **[EU: Article X.9: Temporary Entry of Personnel (to be adapted to horizontal M4 provisions)]**

1. Subject to any conditions, reservations and qualifications that a Party shall set out in its Schedule in accordance with Article X.4 (Standstill), **[AU: Subject to any terms limitations, conditions and qualifications that the Party shall set out in its Schedule,]** each Party shall permit temporary entry into its territory of the following personnel of a financial service supplier of any other Party that is establishing or has established a commercial presence in the territory of the Party:
  - (i) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and
  - (ii) specialists in the operation of the financial service supplier.
2. Subject to conditions, reservations and qualifications that a Party shall set out in its Schedule in accordance with Article X.4 (Standstill), **[AU: Subject to any terms limitations, conditions and qualifications that the Party shall set out in its Schedule,]** each Party shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other Party:
  - (i) specialists in computer services, telecommunication services and accounts of the financial service supplier; and
  - (ii) actuarial and legal specialists.]

## **Article X.10: New Financial Services**

Each Party shall permit financial service suppliers of any other Party established in its territory to **[PA, US: supply any new financial service that the Party would permit its own like financial services supplier to supply without adopting a law or modifying an existing law.<sup>5]</sup>**

**[EU: to offer in its territory any new financial service.]**

**[PA, EU: A Party may determine the juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.]**

**[US: Notwithstanding (Market Access, paragraph on juridical form), a Party may determine the institutional and juridical form through which the new financial service may be supplied, and may require authorization for the supply of the service. Where a Party requires a financial service supplier to obtain authorization to supply a new financial service, the Party shall decide within a reasonable time whether to issue the authorization and the authorization may only be refused for prudential reasons.]**

## **Article X.11: [PA: Data Processing and Treatment of Certain Information] [EU: Transfers of Information and Processing of Information] [US: Transfer of Information]**

1. **[PA, EU:** No Party shall take measures that prevent transfers of information or the processing of financial information, including transfers of data by electronic means, into and out of its territory, for data processing or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. Nothing in this paragraph restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Agreement.]
2. **[PA:** Notwithstanding paragraph 1, a Party is not required to furnish or allow access to:
  - (a) information related to the financial affairs and accounts of an individual customer of a financial institution or a cross-border financial service supplier; or
  - (b) confidential information which if disclosed would impede law enforcement or otherwise contrary to the public interest or prejudice legitimate commercial interests of a particular commercial presence.]

**[US:** Each Party shall allow a financial service supplier of another Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the financial service supplier's ordinary course of business.]

**[KR:** The scope of financial information will be defined by each Party's domestic laws and regulations.]

## **Article X.12: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of any 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 is not intended to confer access to the Party's lender of last resort facilities.

## **Article X.13: Self-Regulatory Organizations**

**[PA, EU:** When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Party in order for financial service suppliers of any other Party to supply financial services on an equal basis with financial service suppliers of the Party, or when a Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure that such entities accord national treatment to financial service suppliers of any other Party resident in the territory of the Party.] **[PA:** subject to any conditions and qualifications set out in its Schedule.]

**[US:** Where a Party requires a financial service supplier of another Party to be a Party of, participate in, or have access to, a self-regulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of Articles [I-4] (National Treatment) and [xx] (Most Favored Nation Treatment) by such self-regulatory organization.)

1. **[PA:** For purposes of the national treatment obligations in Article X.7 (Cross-Border Trade), a Party shall accord to a cross-border financial service supplier of another Party treatment no less favorable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.]
2. **[PA:** Differences in market share, profitability or size do not in themselves establish a breach of the obligations under this Article.]

## **PA: Article X.14: Senior Management and Boards of Directors**

1. **[PA:** A Party may not require a financial institution of another Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.]
2. **[PA:** A Party may not require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party or natural persons residing in the territory of the Party.]

## **Article X.15 Non-discriminatory measures**

1. Each Party shall endeavor to remove or to limit any significant adverse effects on financial service suppliers of any other Party of:
  - (a) non-discriminatory measures that prevent financial service suppliers from offering in the Party's territory, in the form determined by the Party, all the financial services permitted by the Party;
  - (b) non-discriminatory measures that limit the expansion of the activities of financial service suppliers into the entire territory of the Party;
  - (c) measures of a Party, when such a Party applies the same measures to the supply of both banking and securities services, and a financial service supplier of any other Party concentrates its activities in the provision of securities services; and
  - (d) other measures that, although respecting the provisions of the Agreement, affect adversely the ability of financial service suppliers of any other Party to operate, complete or enter the Party's market;

provided that any action taken under this paragraph would not unfairly discriminate against financial service suppliers of the Party taking such action.

2. With respect to the non-discriminatory measures referred to in [subparagraphs [x(a) and (b) (immediately above)]] a Party shall endeavor not to limit or restrict the present degree of market opportunities, nor the benefits already enjoyed by financial service suppliers of another Party as a class in the territory of the Party, provided that this commitment does not result in unfair discrimination against financial service suppliers of the Party applying such measures.

## **[PA: Article X.16: Transparent Regulations**

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and financial service suppliers are important in facilitating access of financial institutions and financial suppliers to, and their operations in, each other's markets.
2. Each Party shall make available to interested persons domestic requirements and applicable procedures for completing applications relating to the supply of financial services. Upon request of an applicant, the Party concerned shall inform the applicant of the status of its application. If

the Party concerned requires additional information from the applicant, it shall notify the applicant without undue delay.

3. Where a license or an authorization is required for the supply of a financial service, the competent authorities of a Party shall make the requirements for such a license or authorization publicly available. The period of time normally required to reach a decision concerning an application for a license or an authorization shall:

- (a) be made available to the applicant upon request;
- (b) be made publicly available; or
- (c) be made available by a combination of both.]

## **[EU, TR: Article X.16 Effective and Transparent Regulation]**

1. Each Party shall, to the extent practicable, provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

- (a) by means of an official publication; or
- (b) in other written or electronic form.

2. 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. [para. 2 may need to be adapted to DR chapter]

3. **[EU:** Each Party shall make its best endeavors to ensure that] **[TR:** Parties are encouraged to ensure that/ Parties shall take into consideration, where appropriate, that/ Special regard shall be given that] internationally agreed standard 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 Organization of Securities Commissions (IOSCO), the Financial Action Task Force (FATF) and the Organization for Economic Cooperation and Development (OECD).

The Parties **[EU:** also take note of the] **[TR:** shall, whenever appropriate draw guidance from the] “Ten Key Principles for Information Exchange” promulgated by the G7, and will take all steps necessary to try to apply them in their bilateral contacts.]

## **[US: Article X.16: Transparency]**

1. Articles [XX] of Annex [XX] (Domestic Regulations and/or Transparency) shall not apply to measures within the scope of this Annex.
2. The Parties recognize that transparent regulations and policies governing the activities of financial service suppliers are important in facilitating their ability to gain access to and operate in each other's market. Each Party commits to promote regulatory transparency in trade in financial services.
3. Each Party shall ensure that all measure of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.

4. Each Party shall, to the extent practicable,

- (a) publish in advance any regulations of general application relating to the subject matter of this Annex that it proposes to adopt and the purpose of the regulation; and
- (b) provide interested persons and Parties a reasonable opportunity to comment on such proposed regulations.

5. At the time it adopts a final regulation, a Party should, to the extent practicable, address in writing substantive comments received from interested persons with respect to the proposed regulation.
6. Each Party should, to the extent practicable, allow reasonable time between publication of a final regulation of general application and its effective date.
7. Each Party shall ensure that a rule of general application adopted or maintained by self-regulatory organizations of the Party is promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with it.
8. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding a measure of general application covered by this Annex.
9. Each Party's regulatory authorities shall make publicly available to interested persons the requirements, including any documentation required, for completing an application relating to the supply of financial services.
10. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.
11. A Party's regulatory authority shall make an administrative decision on a completed application of a financial service supplier of another Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.
12. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for denial of the application.]

## **Article X.17: Prudential Measures**

1. Notwithstanding any other provision of the Agreement, a Party shall not be prevented from **[PA, EU: taking] [US: adopting or maintaining]** measures for prudential reasons, including for:

- (a) the protection of investors, depositors, **[PA, US financial market users]**, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
- (b) to ensure the integrity and stability of a Party's financial system.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.

## **[US, EU Article X.18: Treatment of Information**

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.]

## **[EU, US: Article X.19: Recognition**

1. A Party may recognize a prudential measure of any other country in determining how the Party's measure relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. A Party that is a party to such an agreement or arrangement referred to in paragraph [1], whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties to the agreement or arrangement. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that such circumstances exist.]

## **[EU, US: Article X.20: Dispute Settlement [EU: may need to be adapted to DS section]]**

1. [EU, US: A Panel for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.]
2. [US: Where a [Panel] finds a measure to be inconsistent with this Agreement and the measure affects:
  - (a) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector; or
  - (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector.]

## **[US: Article X.21: Expedited Availability of Insurance**

The Parties recognize the importance of maintaining and developing regulatory procedures to expedite the offering of insurance services by licensed suppliers. These procedures may include allowing introduction of products unless those products are disapproved within a reasonable time; not requiring product approval or authorization of insurance lines for insurance other than insurance sold to individuals or compulsory insurance; and not imposing limitations on the number or frequency of product introductions. If a Party maintains regulatory product approval procedures related to the offering of products within the scope of an insurance license, the Party shall endeavor to maintain or improve these existing procedures.]

## **[US: Article X.22: Supply of Insurance by Postal Insurance Entities**

1. The disciplines set out in this section apply where a Party allows its postal insurance entity to underwrite and supply direct insurance services to the general public. The services covered by this paragraph do not include the supply of insurance related to the collection, transport and delivery of letters or packages by a Party's postal insurance entity.

2. No Party **[KR: to the extent possible]** adopt or maintain a measure that creates conditions of competition that are more favorable to a postal insurance entity with respect to the supply of insurance services described in paragraph 1 as compared to a private supplier of like insurance services in its market, including by:

- (a) imposing more onerous conditions on a private supplier's license to supply insurance services than the conditions the Party imposes on a postal insurance entity to supply like services; or
- (b) making a distribution channel for the sale of insurance services available to a postal insurance entity under terms and conditions more favorable than those it applies to private suppliers of like services.

3. With respect to the supply of insurance services described in paragraph 1 by a postal insurance entity, a Party shall apply the same **[KR: level of]** regulations and enforcement activities as apply to the supply of like insurance services by private suppliers.

4. In implementing its obligations under paragraph 3, a Party shall require a postal insurance entity that supplies insurance services described in paragraph 1 to publish an annual financial statement with respect to the supply of such services. The statement shall provide the level of detail and meet the auditing standards required under the generally accepted accounting and auditing principles, or equivalent rules, applied in the Party's territory with respect to publicly traded private enterprises supplying like services.

~~**[KR: The statement shall provide the level of detail and meet the auditing standards required under the generally accepted accounting and auditing principles, or equivalent rules, applied in the Party's territory with respect to publicly traded private enterprises supplying like services.]**~~

5. If a Panel under [Dispute Settlement] finds that a Party is maintaining a measure inconsistent with any of the commitments in paragraphs 2 through 4, the Party shall notify the complaining Party or Parties and provide an opportunity for consultations prior to allowing the postal insurance entity to:

- (a) issue a new insurance product, or modify an existing product in a manner equivalent to the creation of a new product, in competition with like insurance products supplied by a private supplier in the Party's market; or
- (b) increase any limitation on the value of insurance, either in total or with regard to any type of insurance product, that the entity may sell to a single policyholder.

~~**[KR: If a Panel under [Dispute Settlement] finds that a Party is maintaining a measure inconsistent with any of the commitments in paragraphs 2 through 4, the Party shall notify the complaining Party or Parties and provide an opportunity for consultations prior to allowing the postal insurance entity to:**~~

- ~~(a) issue a new insurance product, or modify an existing product in a manner equivalent to the creation of a new product, in competition with like insurance products supplied by a private supplier in the Party's market; or~~
- ~~(b) increase any limitation on the value of insurance, either in total or with regard to any type of insurance product, that the entity may sell to a single policyholder.]~~

6. This section does not apply to a postal insurance entity in the territory of a Party:



- (a) that the Party neither owns nor controls, directly or indirectly, as long as the Party does not maintain any advantage that modifies the conditions of competition in favor of the postal insurance entity in the supply of insurance services as compared to a private supplier of like insurance services in its market; or
  - (b) if neither the sale of direct life nor non-life insurance underwritten by the postal insurance entity accounts for more than ten percent of total annual premium income in the relevant segment of the Party's market as of [DATE CERTAIN].
7. If a postal insurance entity in the territory of a Party exceeds the percentage threshold referred to in paragraph 6(b) after the date the Party signs the Agreement, the Party shall **[KR: to the extent practicable,]** ensure that the postal insurance entity is:
- (a) regulated by and subject to the enforcement of the same authorities that regulate and conduct enforcement activities with respect to the supply of insurance services by private suppliers; and
  - (b) subject to the financial reporting requirements applying to financial services suppliers supplying insurance services.
8. For purposes of this section, postal insurance entity means an entity that underwrites and sells insurance to the general public and is owned or controlled, directly or indirectly by a postal entity of the Party.]

**[US: Additional proposal on sectoral cooperatives selling insurance under consideration.]**

**1** For the purpose of this Article, "numerical restrictions" means limitations imposed either on the basis of a regional subdivision or on the basis of the entire territory of a Party, on the number of financial institutions whether in the form of a numerical quota, a monopoly, an exclusive service supplier or the requirements of an economic needs test.

**2 [Norway:** with an activity of at least 10 man-years or annual sales of above USD 10 million]

**3** Custodial services are included in paragraph (e) only with respect to investments for which the primary market is outside of the territory of the Party.

**4** For great certainty, the electronic payment services for payment card transactions referred to in this commitment fall within subparagraph (h) of the definition of "financial service" in Article 2, and within subcategory 71593 of the United Nations Central Product Classification, Version 2.0, and include only the processing of financial transactions such as verification of financial balances, authorization of transactions, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries and instructions regarding the net financial position of relevant institutions for authorized transactions.

**5** For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

Download the full secret TISA Financial Services Annex as PDF here (</tisa-financial/WikiLeaks-secret-tisa-financial-annex.pdf>).

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