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ANNEX

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to the

**PROPOSAL FOR A COUNCIL DECISION**

**on the signing, on behalf of the European Union, of the Agreements in the form of an Exchange of Letters between the European Union and the Commonwealth of Australia, the Federative Republic of Brazil, Canada, the Hong Kong Special Administrative Region of the People's Republic of China, the Republic of India and Japan pursuant to Article XXI of the General Agreement on Trade in Services (GATS) 1994, relating to the modifications of the commitments in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union**

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### PROPOSAL FOR A COUNCIL DECISION

**on the signing, on behalf of the European Union, of the Agreements in the form of an Exchange of Letters between the European Union and the Commonwealth of Australia, the Federative Republic of Brazil, Canada, the Hong Kong Special Administrative Region of the People's Republic of China, the Republic of India and Japan pursuant to Article XXI of the General Agreement on Trade in Services (GATS) 1994, relating to the modifications of the commitments in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union**

#### AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

**between the European Union and XXXXX pursuant to Article XXI of the General Agreement on Trade in Services (GATS) 1994 relating to the modification of commitments in the schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union**

##### *A. Letter from the European Union*

Place, date

Sir,

Following negotiations under Article XXI of the General Agreement on Trade in Services (GATS) 1994 relating to the modification of the Schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union, I have the honour to send you the attached joint letter as well as the draft report on the result of the negotiations conducted in accordance of Article XXI:2(a) of the GATS.

The report includes two annexes: (1) modifications proposed in the notifications and (2) the elements agreed on the compensation package.

I should be obliged if you would confirm that your Government is in agreement with the content of this letter. I have the honour to propose that, should this be the case, this letter and your confirmation shall together constitute an Agreement in the form of an Exchange of Letters between the European Union and XXXXX (the 'Agreement').

Should you agree, I would propose that you also sign the joint letter and initial the report annexed to this letter and return these documents, which I would then sign and initial and send to the WTO Secretariat, according to the WTO procedures.

Please accept, Sir, the assurance of my highest consideration.

*For the European Union*

*B. Letter from XXXXX*

Place, date

Sir,

I have the honor to acknowledge the receipt of your letter of ..., which reads as follows:

*“Following negotiations under Article XXI of the General Agreement on Trade in Services (GATS) 1994 relating to the modification of the Schedules of the Republic of Bulgaria and Romania in the course of their accession to the European Union, I have the honour to send you the attached joint letter as well as the draft report on the result of the negotiations conducted in accordance of Article XXI:2(a) of the GATS.*

*The report includes two annexes: (1) modifications proposed in the notifications and (2) the elements agreed on the compensation package.*

*I should be obliged if you would confirm that your Government is in agreement with the content of this letter. I have the honour to propose that, should this be the case, this letter and your confirmation shall together constitute an Agreement in the form of an Exchange of Letters between the European Union and XXXXX (the ‘Agreement’).*

*Should you agree, I would propose that you also sign the joint letter and initial the report annexed to this letter and return these documents, which I would then sign and initial and send to the WTO Secretariat, according to the WTO procedures.”*

I hereby have the honor to express my Government's agreement with the above letter.

Please accept, Sir, the assurance of my highest consideration.

*On behalf of XXXXX*

## **Joint letter**

**from the European Union on the one part, and XXXXX, on the other part, pursuant to paragraph 5 of the Procedures for the implementation of Article XXI of the General Agreement on Trade in Services (GATS) (S/L/80 of 29 October 1999) relating to the modifications proposed in the GATS Schedules of the European Union (hereafter the EU) to take account of the accession of the Republic of Bulgaria and Romania to the European Union**

On 22 October 2007, the European Union ("EU") submitted a Communication pursuant to Article V of the GATS (circulated as document S/SECRET/11, dated 30 October 2007<sup>1</sup>), whereby it notified its intention to modify the specific commitments included in the list attached to the Communication, pursuant to Article V:5 of the GATS and in accordance with the terms of Article XXI:1(b) of the GATS.

Following the submission of the Communication, XXXXX submitted its claim of interest pursuant to Article XXI:2(a) of the GATS (XXXX). The EU and XXXXX entered into negotiations pursuant to Article XXI:2(a) of the GATS with regard to S/SECRET/11.

With regard to the procedure initiated by the notification contained in document S/SECRET/11, the initial period for the negotiations, which expired on 14 March 2008, was extended (by mutual agreement) thirteen times ((until 25 April 2008, until 6 June 2008, until 6 October 2008, until 9 January 2009, until 27 March 2009, until 26 June 2009, until 31 January 2010, until 30 September 2010, until 30 June 2011, until 29 June 2012, until 15 January 2013, until 15 July 2013 and finally until 15 January 2014)). Following such negotiations, the EU and XXXXX have agreed on compensatory adjustments related to the modifications contained in document S/SECRET/11.

The Report on the result of these negotiations, which is attached to this letter, includes (1) the proposed modifications in the notification referred to above and (2) the agreed compensatory adjustments with regard to the modifications notified in S/SECRET/11.

This letter and the Annex I and II of the report attached to it constitute the Agreement between the EU and XXXXX with regard to S/SECRET/11 for purposes of Article XXI:2(a) of the GATS and the procedures contained in paragraphs 5 and 6 of S/L/80.<sup>2</sup> The Agreement shall not be interpreted as modifying the Lists of Article II Exemptions of the EU. The agreement shall not be interpreted as affecting the Parties' rights and obligations under Article VIII of the GATS.

In order to comply with the procedures referred to in paragraphs 20 to 22 of S/L/80 the EU will upon the completion of the EU's relevant internal approval procedures circulate through the Secretariat for certification the modifications and compensatory adjustments set out in this Agreement in the form of a draft consolidated schedule. This draft schedule will result from merging existing schedules of commitments of the EU and from inserting therein both the modifications of commitments notified by the EU under document S/SECRET/11 and the compensatory adjustments agreed between the EU and XXXXX.

Pursuant to paragraph 20 of S/L/80 the certified schedule will enter into force upon the conclusion of a period of 45 days from the date of circulation, provided no objection has been raised by a Member on a ground that the draft schedule does not correctly reflect the results of

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<sup>1</sup> Corrigendum circulated as document S/SECRET/11/corr.1, dated 26 November 2007

<sup>2</sup> This agreement shall not be interpreted to prejudice the outcome of separate discussions within the WTO concerning the classification of telecommunication services (basic telecommunications and value-added services).

the action under Article XXI and/or that the modifications contained in the draft schedule exceed those initially notified. As a result, the modifications proposed in documents S/SECRET/11 shall not enter into force until all of the compensatory adjustments indicated in Annex II have entered into force.

This Agreement is drawn up in duplicate in the English, French and Spanish, each of these texts being equally authentic.

Permanent Mission of the European Union to  
the World Trade Organisation

Permanent Mission of XXXXX to the World  
Trade Organisation

Done at:

Done at:

Date:

Date:

## Report

### **on the result of the negotiations conducted in accordance of Article XXI:2(a) of the General Agreement on Trade in Services (GATS) relating to the modifications proposed in the GATS Schedules of the European Union (hereinafter the EU) to take account of the accession of the Republic of Bulgaria and Romania to the European Union,**

Pursuant to paragraph 5 of the Procedures for the implementation of Article XXI of the GATS (S/L/80 of 29 October 1999), the EU submits the following report:

1. On 22 October 2007, the EU submitted a Communication pursuant to Article V of the GATS (circulated as document S/SECRET/11, dated 30 October 2007<sup>3</sup>), whereby it notified its intention to modify the specific commitments included in the list attached to the Communication, pursuant to Article V:5 of the GATS and in accordance with the terms of Article XXI:1(b) of the GATS.
2. XXXXX submitted its claim of interest pursuant to Article XXI:2(a) of the GATS (XXXXX). The EU and XXXXX entered into negotiations pursuant to Article XXI:2(a) of the GATS with regard to S/SECRET/11.
3. With regard to the procedure initiated by the notification contained in document S/SECRET/11, the initial period for the negotiations, which expired on 14 March 2008, was extended (by mutual agreement) thirteen times (until 25 April 2008, until 6 June 2008, until 6 October 2008, until 9 January 2009, until 27 March 2009, until 26 June 2009, until 31 January 2010, until 30 September 2010, until 30 June 2011, until 29 June 2012, until 15 January 2013, until 15 July 2013 and finally until 15 January 2014).
4. Following such negotiations, the EU and XXXXX agreed on compensatory adjustments related to the modifications contained in document S/SECRET/11. Annex I and II of this report, together with the joint letter to which it is attached, constitute the agreement between the EU and XXXXX with regard to S/SECRET/11 for the purposes of Article XXI:2(a) of the GATS.<sup>4</sup> This agreement shall not be interpreted as modifying the lists of Article II Exemptions of the EU. This agreement shall not be interpreted as affecting the Parties' rights and obligations under Article VIII of the GATS.
5. In view of the foregoing, the proposed modifications and the agreed compensatory adjustments are incorporated into the EU's draft GATS consolidated schedule, which results from merging existing schedules of commitments of the EU and from inserting therein both the modifications of commitments notified by the EU under document S/SECRET/11 and the compensatory adjustments agreed between the EU and XXXXX.
6. In order to comply with the procedures referred to in paragraphs 20 to 22 of S/L/80 the EU will, upon the completion of the EU's relevant internal approval procedures, circulate through the Secretariat for certification the modifications and compensatory adjustments set out in this agreement in the form of a draft consolidated schedule. This draft schedule will result from merging existing schedules of commitments of the EU and from inserting therein both the modifications of commitments notified by

<sup>3</sup> Corrigendum circulated as document S/SECRET/11/corr.1, dated 26 November 2007

<sup>4</sup> This agreement shall not be interpreted to prejudice the outcome of separate discussions within the WTO concerning the classification of telecommunication services (basic telecommunications and value-added services).

the EU under document S/SECRET/11 and the compensatory adjustments agreed between the EU and XXXXX.

7. Pursuant to paragraph 20 of S/L/80, the certified schedule will enter into force upon the conclusion of a period of 45 days from the date of circulation, provided no objection has been raised by a Member on a ground that the draft schedule does not correctly reflect the results of the action under Article XXI and/or that the modifications contained in the draft schedule exceed those initially notified. As a result, the modifications proposed in document S/SECRET/11 shall not enter into force until all of the compensatory adjustments indicated in Annex II have entered into force.

## ANNEX I

### Modifications notified in document S/SECRET/11:

#### Horizontal Commitments

1. Market access: “ All EC Member States: services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators<sup>5</sup>”. This entry was not included in the schedule of specific commitments of Bulgaria and Romania. This limitation now applies to all Member States.
2. National treatment limitations on branches, agencies and representative offices under mode 3: "All EC Member States: Treatment accorded to subsidiaries (of third country companies) formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Communities is not extended to branches or agencies established in a Member State by a third-country company. However, this does not prevent a Member State from extending this treatment to branches or agencies established in another Member State by a third-country company or firm, as regards their operation in the first Member State's territory, unless such extension is explicitly prohibited by Community law<sup>6</sup>". This entry was not included in the schedule of specific commitments of Bulgaria and Romania. This limitation now applies to all Member States.
3. National treatment limitations on subsidiaries under mode 3: "All Member States: Treatment less favourable may be accorded to subsidiaries (of third-country companies) formed in accordance with the law of a Member State which have only their registered office in the territory of the Communities, unless it can be shown that they possess an effective and continuous link with the economy of one of the Member States<sup>7</sup>).". This entry was not included in the schedule of specific commitments of Bulgaria and Romania. This limitation now applies to all Member States.
4. National treatment limitations on subsidies under mode 3: " All Member States except HU, PL: Eligibility for subsidies from the European Communities or Member States may be limited to juridical persons established within the territory of a Member State or a particular geographical sub-division thereof. Unbound for subsidies for research and development. The supply of a service, or its subsidisation, within the public sector is not in breach of this commitment.

All Member States except AT, BG, CY, CZ, EE, FI, HU, LT, LV, MT, PL, SE and SK: Unbound for branches established in a Member State by a non-Community company.

HU, PL: Unbound".

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<sup>5</sup> Explanatory Note: Public utilities exist in sectors such as related scientific and technical consulting services, R&D services on social sciences and humanities, technical testing and analysis services, environmental services, health services, transport services and services auxiliary to all modes of transport. Exclusive rights on such services are often granted to private operators, for instance operators with concessions from public authorities, subject to specific service obligations. Given that public utilities often also exist at the sub-central level, detailed and exhaustive sector-specific scheduling is not practical. This limitation does not apply to telecommunications and to computer and related services.

<sup>6</sup> With regard to Austria it applies also to modes 1 and 4.

<sup>7</sup> With regard to Austria it applies also to modes 1 and 4.



The schedule of specific commitments of Bulgaria and Romania did not include the limitation on subsidies under mode 3 inscribed in the schedule of the EC and its Member States. This limitation is now extended to these Member States.

5. National treatment limitations on subsidies under mode 4: "All Member States except AT, PL: to the extent that any subsidies are made available to natural persons, their availability may be limited to nationals of a Member State of the Communities. AT, PL: Unbound." The schedule of specific commitments of Romania did not include the limitation on subsidies under mode 4 inscribed in the schedule of the EC and its Member States. This limitation is now extended to this Member State.

ANNEX II  
COMPENSATION BY THE EC

- **Telecommunication services**
  - Alignment of the commitments of Bulgaria and Romania with those of the EC-25;
- **Financial services**
  - Improvement of the commitments of Bulgaria and Romania in the insurance sector as following:

*For Bulgaria:*

Financial services

A. Insurance and Insurance-Related services

Mode 3: delete the 5 years requirement for foreign branches:

*For Romania:*

Financial services

A. Insurance and Insurance-Related services Reinsurance and retrocession

Mode 1) and 2) None, delete limitation "except that reinsurance on international market is allowed only if the reinsured risk cannot be placed on domestic market."

The following abbreviations are used to indicate the Member States:

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	The Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovak Republic
UK	United Kingdom