



Brussels, 7.6.2022
COM(2022) 257 final

2022/0174 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of an agreement on the modification of schedules of specific commitments under the General Agreement on Trade in Services to incorporate Annex 1 of the Declaration on the Conclusion of Negotiations on Services Domestic Regulation of 2 December 2021

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article VI of the General Agreement on Trade in Services (GATS) contains a built-in mandate to develop necessary disciplines with a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. The Members of the World Trade Organization (WTO) have been negotiating such domestic regulation disciplines for many years and as of 1999, those negotiations took place in the Working Party on Domestic Regulation. The multilateral negotiations based on this mandate did not yet result in an agreement among all WTO Members, despite efforts to revive the negotiations in the run-up to the 11th Ministerial Conference of the WTO (MC11) in Buenos Aires.

At MC11, a group of 59 WTO Members, including the European Union, therefore issued a Joint Ministerial Statement on Services Domestic Regulation.¹ With the statement, the Ministers reaffirmed their commitment to advancing negotiations on services domestic regulation and called upon all WTO Members to intensify work post-MC11 towards concluding the negotiation of disciplines on domestic regulation.

In May 2019, a new Joint Statement was issued, in which the Ministers of 59 WTO Members welcomed the progress made in the negotiations since MC11 and committed to continue working on the outstanding issues with a view to incorporating the outcome of the work into their respective schedules of specific commitments by the 12th Ministerial Conference.²

The negotiations of this Joint Statement Initiative were successfully concluded on 2 December 2021 and resulted in a Reference Paper on Services Domestic Regulation ('the Reference Paper')³. In a Declaration on the Conclusion of Negotiations on Services Domestic Regulation issued on 2 December 2021 ('the Declaration')⁴, 67 WTO Members noted the conclusion of the negotiations on the Reference Paper which forms Annex 1 of the Declaration. They also welcomed the Schedules of Specific Commitments which were submitted as their contributions to finalise the negotiations. Those 67 WTO members account for more than 90% of the global trade in services.

In accordance with Section 1 of the Reference Paper, the participants to the Declaration confirmed their intention to incorporate the disciplines in the Reference Paper (contained in Annex 1 of the Declaration) as additional commitments into their GATS Schedules. Subject to the completion of any required domestic procedures, the participants aim to submit their Schedules of Specific Commitments for certification, in accordance with the Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments⁵, within twelve months of the date of the Declaration. Through the certification, the participants will give legal effect to the disciplines of Annex 1 of the Declaration by incorporating them as additional commitments into their schedule of specific commitments under the GATS.

¹ WT/MIN(17)/61 of 13 December 2017

² WT/L/1059 of 23 May 2019

³ INF/SDR/2 of 26 November 2021, attached to WT/L/1129 as Annex 1

⁴ WT/L/1129 of 2 December 2021

⁵ S/L/84 of 14 April 2000

The present Commission proposal for a Council decision aims at formally concluding the agreement on a modification of the EU's GATS Schedule in order to incorporate the disciplines of the Reference Paper (Annex 1 of the Declaration), in accordance with Article 218(6) TFEU. The modifications to the EU's GATS Schedule should be done in line with the Union's Pre-Finalisation Schedule of Specific Commitments.⁶

- **Consistency with existing policy provisions in the policy area**

The negotiations were conducted in close consultation with the Trade Policy Committee Services and Investment as provided for by Article 218(3). The formal conclusion of the negotiations by the Council is one of the necessary steps under Article 218(6) to give legal effect to the negotiated outcome and to start the modification of the EU's Schedule of Specific Commitments.

- **Consistency with other Union policies**

The agreement is fully consistent with European Union policies. The agreement safeguards public services and has no impact on governments' right to regulate in the public interest.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The agreement is to be concluded by the European Union pursuant to a decision of the Council based on Article 218(6) TFEU, following the European Parliament's consent.

- **Subsidiarity (for non-exclusive competence)**

According to Article 5(3) of the TEU, the subsidiarity principle does not apply in areas of exclusive EU competence.

- **Proportionality**

The proposal to conclude the agreement does not exceed what is necessary to achieve the objective of taking additional commitments under GATS for domestic regulation on behalf of the European Union.

- **Choice of the instrument**

This proposal for a Council decision is submitted in accordance with paragraph 6 of Article 218 TFEU, which envisages the adoption by the Council of a decision authorising the conclusion of the agreement. This appears to be the most appropriate legal instrument to achieve the objective expressed in this proposal

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

Not applicable

⁶ INF/SDR/IDS/EU/Rev.1.

- **Collection and use of expertise**

Not applicable

- **Impact assessment**

Not applicable

- **Regulatory fitness and simplification**

The agreement is not subject to REFIT procedures.

- **Fundamental rights**

The proposal does not affect the protection of fundamental rights within the European Union.

4. BUDGETARY IMPLICATIONS

The agreement is not expected to have a financial impact on the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

The agreement would permit the incorporation of the disciplines in Annex 1 of the Declaration into the GATS Schedule applicable in the territory of the European Union.

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of an agreement on the modification of schedules of specific commitments under the General Agreement on Trade in Services to incorporate Annex 1 of the Declaration on the Conclusion of Negotiations on Services Domestic Regulation of 2 December 2021

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, Article 100(2), and Article 207, in conjunction with point (v) of Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament⁷,

Whereas:

- (1) At the 11th Ministerial Conference of the World Trade Organization, a group of 59 WTO Members, including the European Union, issued a Joint Ministerial Statement on Services Domestic Regulation whereby they launched a plurilateral initiative to negotiate disciplines on services domestic regulation.
- (2) Negotiations have been conducted by the Commission in consultation with the Committee established under Article 207(3) of the Treaty. The number of participants of this plurilateral Joint Statement Initiative increased to 67 WTO Members over time.
- (3) On 2 December 2021, the participants in these negotiations issued a Declaration on the Conclusion of Negotiations on Services Domestic Regulation (“the Declaration”), which announced the successful conclusion of the negotiations. The participants noted the conclusion of negotiations on the Reference Paper on Services Domestic Regulation⁸ (“the Reference Paper”), which forms Annex 1 to the Declaration. They also welcomed the schedules of Specific Commitments⁹ which were submitted by Members as their contributions to finalise the negotiations and form Annex 2 to the Declaration.
- (4) The participants to the Declaration intend to incorporate the disciplines in the Reference Paper (Annex 1) as additional commitments into their GATS Schedules, in accordance with Section 1 of the Reference Paper. In accordance with paragraph 5 of the Declaration, the Participants aim to submit their Schedules of Specific Commitments for certification, pursuant to the Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments¹⁰, within twelve months of the date of the Declaration, subject to the completion of any required domestic procedures.

⁷ OJ C,.....

⁸ WTO document INF/SDR/2, attached to the Declaration as Annex 1.

⁹ WTO document INF/SDR/3, attached to the Declaration as Annex 2.

¹⁰ WTO document S/L/84.

- (5) The agreement to incorporate the disciplines in Annex 1 as additional commitments into the EU's GATS schedule should be approved on behalf of the Union.
- (6) In accordance with the Declaration, the Union should submit to the WTO the necessary modifications to its GATS Schedule, as set out in the Union's Pre-Finalisation Schedule of Specific Commitments INF/SDR/IDS/EU/Rev. 1,

HAS ADOPTED THIS DECISION:

Article 1

The incorporation of the disciplines in Annex 1 to the Declaration on the Conclusion of Negotiations on Services Domestic Regulation into the European Union's GATS Schedule as set out in INF/SDR/IDS/EU/Rev. 1 is hereby approved on behalf of the European Union.

The text of the Declaration and the European Union's Pre-Finalisation Schedule of Specific Commitments are attached to this decision.

Article 2

The Commission is hereby authorised to submit to the World Trade Organization the necessary modifications to the European Union's GATS Schedule, as set out in the European Union's Pre-Finalisation Schedule of Specific Commitments INF/SDR/IDS/EU/Rev.1.

Article 3

This Decision shall enter into force on the day of its adoption and shall be published in the Official Journal of the European Union.

Done at Brussels,

*For the Council
The President*