

Council Decision of 14 December 1998 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organisation negotiations on financial services (1999/61/EC)

COUNCIL DECISION

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concerning the conclusion on behalf of the European Community,
as regards matters within its competence, of the results of the
World Trade Organisation negotiations on financial services

(1999/61/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 54, 57, 63, 66, 73b to 73f, 99, 100, 100a and 113, in conjunction with the second sentence of Article 228(2) and the first subparagraph of Article 228(3) thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas the Marrakesh Agreement establishing the World Trade Organisation (WTO) and its related agreements as well as the Ministerial Decisions and Declarations and the Understanding on commitments in financial services were approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994)⁽⁴⁾;

Whereas the overall commitments on financial services negotiated by the Commission, on behalf of the European Community and its Member States, constitute a satisfactory and balanced outcome of the negotiations;

Whereas on 12 December 1997 the Council approved, subject to definitive approval after completion of internal procedures, the final schedule of commitments of the European Communities and its Member States (GATS/SC/31/Suppl. 4), and authorised the Commission to submit that list, on behalf of the European Community and its Member States, to the WTO;

Whereas on the same date the Council authorised the Commission to approve, on behalf of the European Community and its Member States, the final result of the negotiations as set out in the Fifth Protocol to the GATS (S/L/45), the Decision adopting that Protocol (S/L/44) and the Decision on commitments in financial services (S/L/50);

Whereas the competence of the Community to conclude international agreements derives not 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;

Status: Point in time view as at 14/12/1998.

Changes to legislation: There are currently no known outstanding effects for the Council Decision of 14 December 1998 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organisation negotiations on financial services (1999/61/EC). (See end of Document for details)

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 affect Community rules adopted on the basis of Articles 54, 57, 63, 66, 99, 100 and 100a and may therefore only be entered into by the Community alone;

Whereas, in particular, the use of Article 100 of the Treaty as a legal base for this Decision is justified to the extent that the aforementioned commitments on financial services affect Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States⁽⁵⁾ and Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States⁽⁶⁾, which are based on Article 100 of the Treaty;

Whereas, with regard to capital movement commitments contained in the list of specific commitments of the Community and of the Member States and in the present state of Community law, there is a general competence of the Community; whereas Member States however remain competent to act within the limits laid down by the provisions of Article 73c of the Treaty;

Whereas, by their nature, the Agreement establishing the World Trade Organisation and the Protocols to the General Agreement on Trade in Services are not likely to be directly invoked before Community or Member States' courts,

HAS DECIDED AS FOLLOWS:

Article 1

1 The Fifth Protocol to the General Agreement on Trade in Services concerning financial services (S/L/45) is hereby approved on behalf of the Community with regard to that portion of it which falls within the competence of the Community.

2 The text of the Fifth Protocol, together with the schedule of specific commitments (GATS/SC/31/Suppl. 4) and the list of the exemptions from Article II of the General Agreement on Trade in Services (GATS/EL/31) of the Community and the Member States concerning financial services are attached to this Decision, as are also the following Decisions:

- the Decision of the Committee on Trade on Financial Services adopting the Fifth Protocol to the General Agreement on Trade in Services (S/L/44),
- the Decision of the Council for Trade in Services of December 1997 on commitments in financial services (S/L/50).

3 The President of the Council is hereby authorised to designate the person empowered to sign the Fifth 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.

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Done at Brussels, 14 December 1998.

For the Council

The President

W. MOLTERER

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- (1) OJ C 400, 22. 12. 1998, p. 26.
- (2) OJ C 379, 7. 12. 1998.
- (3) OJ C 407, 28. 12. 1998, p. 279.
- (4) OJ L 336, 23. 12. 1994, p. 1.
- (5) OJ L 225, 20. 8. 1990, p. 1.
- (6) OJ L 225, 20. 8. 1990, p. 6.

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