

Council Decision of 25 June 1996 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organization negotiations on financial services and on the movement of natural persons (96/412/EC)

COUNCIL DECISION

of 25 June 1996

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

(96/412/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,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Whereas the Marrakesh Agreement establishing the World Trade Organization 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⁽³⁾;

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 for the interim period concerned;

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

Whereas on 26 July 1995 the Council authorized the Commission to approve, on behalf of the European Community and its Member States, the Decision of the Committee on Trade in Financial Services adopting the Second Protocol annexed 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, adopting the Third Protocol to the General Agreement on Trade in Services;

Status: Point in time view as at 25/06/1996.

Changes to legislation: There are currently no known outstanding effects for the Council Decision of 25 June 1996 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organization negotiations on financial services and on the movement of natural persons (96/412/EC). (See end of Document for details)

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;

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 the movement of natural persons 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⁽⁴⁾ 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⁽⁵⁾, 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, Member States remain competent to act, within the limit laid down by the provisions of Article 73c of the Treaty;

Whereas, by their nature, the Agreement establishing the World Trade Organization 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 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, together with the schedule of specific commitments and the list of the exemptions of the Community and the Member States are attached to this Decision, as are also the following Decisions:

- the Decision of the Committee on Trade on 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 in 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.

Status: Point in time view as at 25/06/1996.

Changes to legislation: There are currently no known outstanding effects for the Council Decision of 25 June 1996 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organization negotiations on financial services and on the movement of natural persons (96/412/EC). (See end of Document for details)

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, together with the schedule of specific commitments of the Community and the Member States, and 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 Luxembourg, 25 June 1996.

For the Council

The President

E. RONCHI

Status: Point in time view as at 25/06/1996.

Changes to legislation: There are currently no known outstanding effects for the Council Decision of 25 June 1996 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organization negotiations on financial services and on the movement of natural persons (96/412/EC). (See end of Document for details)

ANNEX

SECOND PROTOCOL TO THE GENERAL AGREEMENT ON THE 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 the English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the schedules annexed hereto.

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,

Status: Point in time view as at 25/06/1996.

Changes to legislation: There are currently no known outstanding effects for the Council Decision of 25 June 1996 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organization negotiations on financial services and on the movement of natural persons (96/412/EC). (See end of Document for details)

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.

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 Services adopted by the Council for 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 60 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 period referred to in point (a), 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 for the implementation of paragraph 1.

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,

Status: Point in time view as at 25/06/1996.

Changes to legislation: There are currently no known outstanding effects for the Council Decision of 25 June 1996 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organization negotiations on financial services and on the movement of natural persons (96/412/EC). (See end of Document for details)

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 60 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.

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 Marrakech 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 30 June 1996.
3. This Protocol shall enter into force on the 30th day after 1 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 30 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.

Status: Point in time view as at 25/06/1996.

Changes to legislation: There are currently no known outstanding effects for the Council Decision of 25 June 1996 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organization negotiations on financial services and on the movement of natural persons (96/412/EC). (See end of Document for details)

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 the English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the schedules annexed hereto.

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 in Marrakesh on 15 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.

Status: Point in time view as at 25/06/1996.

Changes to legislation: There are currently no known outstanding effects for the Council Decision of 25 June 1996 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organization negotiations on financial services and on the movement of natural persons (96/412/EC). (See end of Document for details)

- (1) Opinion of the European Parliament of 6 June 1996 (not yet published in the Official Journal).
- (2) Opinion of the Economic and Social Committee of 30 May 1996 (not yet published in the Official Journal).
- (3) [OJ No L 336, 23. 12. 1994, p. 1.](#)
- (4) [OJ No L 225, 20. 8. 1990, p. 1.](#)
- (5) [OJ No L 225, 20. 8. 1990, p. 6.](#)

Status:

Point in time view as at 25/06/1996.

Changes to legislation:

There are currently no known outstanding effects for the Council Decision of 25 June 1996 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the results of the World Trade Organization negotiations on financial services and on the movement of natural persons (96/412/EC).