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(Acts whose publication is not obligatory)

COUNCIL

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)

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;

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;

⁽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.

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 ⁽¹⁾ 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 ⁽²⁾, 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.

Done at Brussels, 14 December 1998.

For the Council
The President
W. MOLTERER

⁽¹⁾ OJ L 225, 20. 8. 1990, p. 1.

⁽²⁾ OJ L 225, 20. 8. 1990, p. 6.

*ANNEX***FIFTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES**

MEMBERS OF THE WORLD TRADE ORGANISATION (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 second Decision on financial services adopted by the Council for Trade in Services on 21 July 1995 (S/L/9),

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 Member concerned until 29 January 1999.
3. This Protocol shall enter into force on the 30th day following the date of its acceptance by all Members concerned. If by 30 January 1999 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 twenty-seventh day of February one thousand nine hundred and ninety-eight, in a single copy in English, French and Spanish languages, each text being authentic, except as otherwise provided for in respect of the schedules annexed hereto.

Annex

EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

SCHEDULE OF SPECIFIC COMMITMENTS

Supplement 4

(This is authentic in English, French and Spanish)

This text replaces the financial services section contained in document GATS/SC/31/Suppl. 1/Rev. 1.

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
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FINANCIAL SERVICES SECTOR⁽¹⁾

- The Communities and their Member States undertake commitments on financial services in accordance with the provisions of the 'Understanding on commitments in financial services' (the Understanding).
- These commitments are subject to the limitations on market access and national treatment in the 'all sectors' section of this schedule and to those relating to the sub-sectors listed below.
- The market access commitments in respect of modes (1) and (2) apply only to the transactions indicated in paragraphs B.3 and B.4 of the market access section of the Understanding respectively.
- Notwithstanding note 1 above, the market access and national treatment commitments in respect of mode (4) on financial services are those in the 'all sectors' section of this schedule, except for Sweden in which case commitments are made in accordance with the Understanding.
- The admission to the market of new financial services or products may be subject to the existence of, and consistency with, a regulatory framework aimed at achieving the objectives indicated in Article 2(a) of the financial services Annex.
- As a general rule and in a non-discriminatory manner, financial institutions incorporated in a Member State of the Community must adopt a specific legal form.

A. Insurance and insurance-related services	<p>(1) A: Promotional activity and intermediation on behalf of a subsidiary not established in the Community or of a branch not established in Austria (except for reinsurance and retrocession) are prohibited.</p> <p>A: Compulsory air insurance can be underwritten only by a subsidiary established in the Community or by a branch established in Austria.</p> <p>DK: Compulsory air transport insurance can be underwritten only by firms established in the Community.</p> <p>DK: No persons or companies (including insurance companies) may for business purposes in Denmark assist in effecting direct insurance for persons resident in Denmark, for Danish ships or for property in Denmark, other than insurance companies licensed by Danish law or by Danish competent authorities.</p>	<p>(1) A: Higher premium tax is due for insurance contracts (except for contracts on reinsurance and retrocession) which are written by a subsidiary not established in the Community or by a branch not established in Austria. Exception from the higher tax can be granted.</p>	<p>The European Communities and their Member States undertake additional commitments as contained in the attachment.</p>
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(¹) Unlike foreign subsidiaries, branches established directly in a Member State by a non-Community financial institution are not, with certain limited exceptions, subject to prudential regulations harmonised at Community level which enable such subsidiaries to benefit from enhanced facilities to set up new establishments and to provide cross-border services throughout the Community. Therefore, such branches receive an authorisation to operate in the territory of a Member State under conditions equivalent to those applied to domestic financial institutions of that Member State, and may be required to satisfy a number of specific prudential requirements such as, in the case of banking and securities, separate capitalisation and other solvency requirements and reporting and publication of accounts requirements or, in the case of insurance, specific guarantee and deposit requirements, a separate capitalisation, and the localisation in the Member State concerned of the assets representing the technical reserves and at least one third of the solvency margin. Member States may apply the restrictions indicated in this schedule only with regard to the direct establishment from a third country of a commercial presence or to the provision of cross-border services from a third country; consequently, a Member State may not apply these restrictions, including those concerning establishment, to third-country subsidiaries established in other Member States of the Community, unless these restrictions can also be applied to companies or nationals of other Member States in conformity with Community law.

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>D: Compulsory air insurance policies can be underwritten only by a subsidiary established in the Community or by a branch established in Germany.</p> <p>D: If a foreign insurance company has established a branch in Germany, it may conclude insurance contracts in Germany relating to international transport only through the branch established in Germany.</p> <p>E, I: Unbound for the actuarial profession.</p> <p>FIN: Only insurers having their head office in the European Economic Area or having their branch in Finland may offer insurance services as referred to in subparagraph 3(a) of the Understanding.</p> <p>FIN: The supply of insurance broker services is subject to a permanent place of business in the European Economic Area.</p> <p>F: Insurance of risks relating to ground transport may be carried out only by insurance firms established in the Community.</p> <p>I: Insurance of risks relating to cif exports by residents in Italy may be underwritten only by insurance firms established in the Community.</p> <p>I: Transport insurance of goods, insurance of vehicles as such and liability insurance regarding risks located in Italy may be underwritten only by insurance companies established in the Community. This reservation does not apply for international transport involving imports into Italy.</p> <p>P: Air and maritime transport insurance, covering goods, aircraft, hull and liability can be underwritten only by firms established in the EC; only persons or companies established in the EC may act as intermediaries for such insurance business in Portugal.</p> <p>S: The supply of direct insurance is allowed only through an insurance service supplier authorised in Sweden, provided that the foreign service supplier and the Swedish insurance company belong to the same group of companies or have an agreement of cooperation between them.</p> <p>(2) A: Promotional activity and intermediation on behalf of a subsidiary not established in the Community or of a branch not established in Austria (except for reinsurance and retrocession) are prohibited.</p> <p>A: Compulsory air insurance can be underwritten only by a subsidiary established in the Community or by a branch established in Austria.</p>	<p>(2) A: Higher premium tax is due for insurance contracts (except for contracts on reinsurance and retrocession) which are written by a subsidiary not established in the Community or by a branch not established in Austria. Exception from the higher tax can be granted.</p>	

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>DK: Compulsory air transport insurance can be underwritten only by firms established in the Community.</p> <p>DK: No persons or companies (including insurance companies) may for business purposes in Denmark assist in effecting direct insurance for persons resident in Denmark, for Danish ships or for property in Denmark, other than insurance companies licensed by Danish law or by Danish competent authorities.</p> <p>D: Compulsory air insurance policies can be underwritten only by a subsidiary established in the Community or by a branch established in Germany.</p> <p>D: If a foreign insurance company has established a branch in Germany, it may conclude insurance contracts in Germany relating to international transport only through the branch established in Germany.</p> <p>F: Insurance of risks relating to ground transport may be carried out only by insurance firms established in the Community.</p> <p>I: Insurance of risks relating to cif exports by residents in Italy may be underwritten only by insurance firms established in the Community.</p> <p>I: Transport insurance of goods, insurance of vehicles as such and liability insurance regarding risks located in Italy may be underwritten only by insurance companies established in the Community. This reservation does not apply for international transport involving imports into Italy.</p> <p>P: Air and maritime transport insurance, covering goods, aircraft, hull and liability can be underwritten only by firms established in the EC; only persons or companies established in the EC may act as intermediaries for such insurance business in Portugal.</p> <p>(3) A: The licence for branch offices of foreign insurers has to be denied if the insurer, in the home country, does not have a legal form corresponding or comparable to a joint stock company or a mutual insurance association.</p> <p>B: Any public bid to acquire Belgian securities made by or on behalf of a person, company or institution outside the jurisdiction of one of the Member States of the European Community shall be submitted to the authorisation of the Minister of Finance.</p>	<p>(3) FIN: The general agent of the foreign insurance company shall have his place of residence in Finland, unless the company has its head office in the European Economic Area.</p> <p>S: Non-life insurance undertakings not incorporated in Sweden conducting business in Sweden are — instead of being taxed according to the net result — subject to taxation based on the premium income from direct insurance operations.</p>	

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>E: Before establishing a branch or agency in Spain to provide certain classes of insurance, a foreign insurer must have been authorised to operate in the same classes of insurance in its country of origin for at least five years.</p> <p>E, GR: The right of establishment does not cover the creation of representative offices or other permanent presence of insurance companies, except where such offices are established as agencies, branches or head offices.</p> <p>FIN: The managing director, at least one auditor and at least one half of the promoters and members of the board of directors and the supervisory board of an insurance company shall have their place of residence in the European Economic Area, unless the Ministry of Social Affairs and Health has granted an exemption.</p> <p>FIN: Foreign insurers cannot get a licence in Finland as a branch to carry on statutory social insurances (statutory pension insurance, statutory accident insurance).</p> <p>F: The establishment of branches is subject to a special authorisation for the representative of the branch.</p> <p>I: Access to actuarial profession through natural persons only. Professional associations (no incorporation) among natural persons permitted.</p> <p>I: The authorisation of the establishment of branches is ultimately subject to the evaluation of supervisory authorities.</p> <p>IRL: The right of establishment does not cover the creation of representative offices.</p> <p>P: Foreign companies may carry out insurance intermediation in Portugal only through a company formed in accordance with the law of a Community Member State.</p> <p>P: In order to establish a branch in Portugal, foreign companies need to demonstrate prior operational experience of at least five years.</p> <p>S: Foreign companies may only establish as a subsidiary or through a resident agent.</p> <p>S: Insurance broking undertakings not incorporated in Sweden may establish a commercial presence only through a branch.</p>	<p>S: A founder of an insurance company shall be a natural person resident in the European Economic Area or a legal entity incorporated in the European Economic Area.</p>	

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>B. Banking and other financial services (excluding insurance)</p>	<p>(4) Unbound except as indicated in the horizontal section and subject to the specific conditions:</p> <p>GR: A majority of the members of the board of directors of a company established in Greece shall be nationals of one of the Member States of the Community.</p> <p>(1)⁽²⁾ B: Establishment in Belgium is required for the provision of investment advisory services.</p> <p>I: Unbound for 'promotori di servizi finanziari' (financial salesmen).</p> <p>IRL: The provision of investment services or investment advice requires either: (i) authorisation in Ireland, which normally requires that the entity be incorporated or be a partnership or a sole trader, in each case with a head/registered office in Ireland (authorisation may not be required in certain cases, e.g. where a third country service provider has no commercial presence in Ireland and the service is not provided to private individuals); or (ii) authorisation in another Member State in accordance with the EC Investment Services Directive.</p>	<p>(4) Unbound except as indicated in the horizontal section and subject to the following specific limitations:</p> <p>A: The management of a branch office must consist of two natural persons resident in Austria.</p> <p>DK: The general agent of an insurance branch will need to have resided in Denmark for the last two years unless being a national of one of the Member States of the Community. The Minister of Business and Industry may grant exemption.</p> <p>DK: Residency requirement for managers and the members of the board of directors of a company. However, the Minister of Business and Industry may grant exemption from this requirement. Exemption is granted on a non-discriminatory basis.</p> <p>E, I: Residence requirement for actuarial profession.</p> <p>(1) None</p>	<p>The European Communities and their Member States undertake additional commitments as contained in the attachment.</p>

⁽²⁾ **I:** Provision and transfer of financial information and financial data processing entailing trading of financial instruments may be prohibited where the protection of investors is likely to be seriously prejudiced. Only authorised banks and investment firms must comply with conduct of business rules in providing investment advice concerning financial instruments and advice to undertakings on capital structure, industrial strategy and related matters, and advice and service relating to mergers and acquisition of undertakings. Advisory activity should not include asset management.

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>(2)⁽³⁾ D: Issues of securities denominated in German marks can be lead managed only by a credit institution, subsidiary or branch, established in Germany.</p> <p>FIN: Payments from governmental entities (expenses) shall be transmitted through the Finnish postal giro system, which is maintained by Postipankki Ltd. Exemption from this requirement may be granted on special reason by the Ministry of Finance.</p> <p>GR: Establishment is required for the provision of custodial and depository services involving the administration of interest and principal payments due on securities issued in Greece.</p> <p>UK: Sterling issues, including privately led issues, can be lead managed only by a firm established in the European Economic Area.</p> <p>(3) All Member States:</p> <ul style="list-style-type: none"> — the establishment of a specialised management company is required to perform the activities of management of unit trusts and investment companies (Articles 6 and 13 of UCITS Directive, 85/611/EEC), — only firms having their registered office in the Community can act as depositories of the assets of investment funds (Articles 8.1 and 15.1 of the UCITS Directive 85/611/EEC). <p>A: Only members of the Austrian stock exchange may engage in securities trading at the stock exchange.</p> <p>A: For trading in foreign exchange and foreign currency authorisation of the Austrian national bank is required.</p> <p>A: Mortgage bonds and municipal bonds may be issued by banks specialised and authorised for this activity.</p> <p>A: For carrying out services of pension fund management a specialised company only for this activity and incorporated as a stock company in Austria is required.</p>	<p>(2) None</p> <p>(3) F: In addition to French credit institutions, issues denominated in French francs may be lead managed only by French subsidiaries (under French law) of non-French banks which are authorised, based on sufficient means and commitments in Paris of the candidate French subsidiary of a non-French bank. These conditions apply to lead banks running the books. A non-French bank may be, without restrictions or requirement to establish, jointly-lead or co-lead manager of Euro-franc bond issue.</p> <p>I: Representative offices of foreign intermediaries cannot carry out activities aimed at providing investment services.</p> <p>S: A founder of a banking company shall be a natural person resident in the European Economic Area or a foreign bank. A founder of a savings bank shall be a natural person resident in the European Economic Area.</p>	

⁽³⁾ **I:** Authorised persons enabled to conduct collective asset management are deemed responsible for any investment activity conducted by their delegated advisers (collective asset management, excluding UCITS).

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>B: Any public bid to acquire Belgian securities made by or on behalf of a person, company or institution outside the jurisdiction of one of the Member States of the European Community shall be submitted to the authorisation of the Minister of Finance.</p> <p>DK: Financial institutions may engage in securities trading on the Copenhagen stock exchange only through subsidiaries incorporated in Denmark.</p> <p>E: Financial institutions may engage in securities trading in securities listed on an official stock exchange or in the Government securities market only through securities firms incorporated in Spain.</p> <p>FIN: At least one half of the founders, the members of the board of directors, the supervisory board and the delegates, the managing director, the holder of the procuration and the person entitled to sign in the name of the credit institution shall have their place of residence in the European Economic Area, unless the Ministry of Finance grants an exemption. At least one auditor shall have his place of residence in the European Economic Area.</p> <p>FIN: The broker (individual person) on derivative exchange shall have his place of residence in the European Economic Area. Exemption from this requirement may be granted under the conditions set by the Ministry of Finance.</p> <p>FIN: Payments from governmental entities (expenses) shall be transmitted through the Finnish postal giro system, which is maintained by Postipankki Ltd. Exemption from this requirement may be granted on special reason by the Ministry of Finance.</p> <p>GR: Financial institutions may engage in the trading of securities listed on the Athens stock exchange only through stock exchange firms incorporated in Greece.</p> <p>GR: For the establishment and operations of branches a minimum amount of foreign exchange must be imported, converted into drachmas and kept in Greece as long as a foreign bank continues to operate in Greece:</p> <ul style="list-style-type: none"> — up to four (4) branches, this minimum is currently equal to half of the minimum amount of share capital required for a credit institution to be incorporated in Greece, — for the operation of additional branches the minimum amount of capital must be equal to the minimum share capital required for a credit institution to be incorporated in Greece. 		

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>I: In providing the activity of door-to-door selling, intermediaries must utilise authorised financial salesmen resident within the territory of a Member State of the European Communities.</p> <p>I: Clearing and settlement of securities may be conducted only by the official clearing system. A company authorised by the Bank of Italy in agreement with Consob could be entrusted with the activity of clearing, up to the final settlement of securities.</p> <p>I: The public offer of securities (as provided for under Article 18 of Law 216/74) other than shares, debt securities (including convertible debt securities) can only be made by Italian limited companies, foreign companies duly authorised, public bodies or companies belonging to local authorities whose assigned capital is not below ITL 2 billion.</p> <p>I: Centralised deposit, custody and administration services can be provided only by the Bank of Italy for Government securities, or by Monte Titoli SpA for shares, securities of a participating nature and other bonds traded in a regulated market.</p> <p>I: In the case of collective investment schemes other than harmonised UCITS under Directive 85/611/EEC, the trustee/depositary is required to be incorporated in Italy or in another Member State of the European Community, being established through a branch in Italy. Only banks, insurance companies, securities investment companies having their legal head office in the European Community may carry out activity of pension fund resources management. Management companies (closed-end funds and real estate funds) are also required to be incorporated in Italy.</p> <p>IRL: In the case of collective investment schemes constituted as unit trusts and variable capital companies (other than undertakings for collective investment in transferable securities, UCITS), the trustee/depositary and management company is required to be incorporated in Ireland or in another Member State of the Community. In the case of an investment limited partnership, at least one general partner must be incorporated in Ireland.</p>		

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>IRL: To become a member of a stock exchange in Ireland, an entity must either: (i) be authorised in Ireland, which requires that it be incorporated or be a partnership, with a head/registered office in Ireland; or (ii) be authorised in another Member State in accordance with the EC Investment Services Directive.</p> <p>IRL: The provision of investment services or investment advice requires either: (i) authorisation in Ireland, which normally requires that the entity be incorporated or be a partnership or a sole trader, in each case with a head/registered office in Ireland (the supervisory authority may also authorise branches of third country entities); or (ii) authorisation in another Member State in accordance with the EC Investment Services Directive.</p> <p>P: The establishment of non-EC banks is subject to an authorisation issued, on a case-by-case basis, by the Minister of Finance. The establishment has to contribute to increase the national banking system's efficiency or has to produce significant effects on the internationalisation of the Portuguese economy.</p> <p>P: The services of venture capital may not be provided by branches of venture capital companies having their head office in a non-EC country. Broker-dealer services on the Lisbon stock exchange may be provided by broker and dealer companies incorporated in Portugal or by branches of investment firms authorised in another EC country and authorised in their home country to provide those services. Broker and dealer services in the Oporto derivatives exchange and in the OTC market may not be provided by branches of non-EC broker/dealer companies.</p> <p>Pension fund management may be provided only by companies incorporated in Portugal and by insurance companies established in Portugal and authorised to take up the life insurance business.</p> <p>UK: Inter-dealer brokers, which are a category of financial institutions dealing in Government debt, are required to be established in the European Economic Area and separately capitalised.</p>		

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>S: Undertakings not incorporated in Sweden may establish a commercial presence only through a branch, and in case of banks, also through a representative office.</p> <p>(4) Unbound except as indicated in the horizontal section and subject to the specific conditions:</p> <p>F: <i>Sociétés d'investissement à capital fixe</i>: condition of nationality for the president of the board of directors, the directors-general and no less than two thirds of the administrators, and also, when the securities firm has a supervisory board or council, for the members of such board or its director-general, and no less than two thirds of the members of the supervisory council.</p> <p>GR: Credit institutions should name at least two persons who are responsible for the operations of the institution. Condition of residency applies to these persons.</p>	<p>(4) Unbound except as indicated in the horizontal section and subject to the following specific limitations:</p> <p>I: Condition of residence within the territory of a Member State of the European Communities for 'promotori di servizi finanziari' (financial salesmen).</p>	

ADDITIONAL COMMITMENTS BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES**INSURANCE**

- (a) The European Communities and their Member States note the close cooperation among the insurance regulatory and supervisory authorities of the Member States and encourage their efforts to promote improved supervisory standards.
- (b) Member States will make their best endeavours to consider within six months complete applications for licences to conduct direct insurance underwriting business, through the establishment in a Member State of a subsidiary in accordance with the legislation of that Member State, by an undertaking governed by the laws of a third country. In cases where such applications are refused, the Member State authority will make its best endeavours to notify the undertaking in question and give the reasons for the refusal of the application.
- (c) The supervisory authorities of the Member States will make their best endeavours to respond without undue delay to requests for information by applicants on the status of complete applications for licences to conduct direct insurance underwriting business, through the establishment in a Member State of a subsidiary in accordance with the legislation of that Member State by an undertaking governed by the laws of a third country.
- (d) The European Communities and their Member States will make their best endeavours to examine any questions pertaining to the smooth operation of the internal market in insurance, and consider any issues that might have an impact on the internal market in insurance.
- (e) The European Communities and their Member States note that, as regards motor insurance, under EC law as in force on 31 December 1997, and without prejudice to future legislation, premiums may be calculated taking several risk factors into account.
- (f) The European Communities and their Member States note that under EC law, as in force on 31 December 1997, and without prejudice to future legislation, the prior approval by national supervisory authorities of policy conditions and scales of premiums that an insurance undertaking intends to use is generally not required.
- (g) The European Communities and their Member States note that under EC law, as in force on 31 December 1997, and without prejudice to future legislation, the prior approval by national supervisory authorities of increases in premium rates is generally not required.

OTHER FINANCIAL SERVICES

- (a) In application of the relevant EC directives, Member States will make their best endeavours to consider within 12 months complete applications for licences to conduct banking activities, through the establishment in a Member State of a subsidiary in accordance with the legislation of that member State, by an undertaking governed by the laws of a third country. In cases where such applications are refused, the Member State will make its best endeavours to notify the undertaking in question and give the reasons for the refusal of the application.
 - (b) Member States will make their best endeavours to respond without undue delay to requests for information by applicants on the status of complete applications for licences to conduct banking activities, through the establishment in a Member State of a subsidiary in accordance with the legislation of that Member State, by an undertaking governed by the laws of a third country.
 - (c) In application of the relevant EC directives, Member States will make their best endeavours to consider within six months complete applications for licences to conduct investment services in the securities field, as defined in the Investment Services Directive, through the establishment in a Member State of a subsidiary in accordance with the legislation of that Member State, by an undertaking governed by the laws of a third country. In cases where such applications are refused, the Member State will make its best endeavours to notify the undertaking in question and give the reasons for the refusal of the application.
 - (d) Member States will make their best endeavours to respond without undue delay to requests for information by applicants on the status of complete applications for licenses to conduct investment services in the securities area, through the establishment in a Member State of a subsidiary in accordance with the legislation of that Member State, by an undertaking governed by the laws of a third country.
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EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

FINAL LIST OF ARTICLE II (MFN) EXEMPTIONS

(This is authentic in English only)

Sector or sub-sector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Direct non-life insurance	Measures based on a bilateral agreement between the European Communities and Switzerland on direct insurance other than life insurance. This agreement provides on a reciprocal basis for freedom of establishment and the right to take up or pursue non-life insurance business for agencies and branches of undertakings whose head office is situated in the territory of the other contracting party.	Switzerland	Indefinite	Need to remove obstacles to the taking up and pursuit of non-life insurance business in the framework of an agreement between the European Communities and Switzerland on non-life insurance consistent with the provisions of paragraph 3 of the Annex of financial services
Financial services	Measure granting favourable tax treatment (off-shore regime) in Italy to service suppliers trading with the countries to which the measure applies.	States in central, eastern and south-eastern Europe, and all Members of the Commonwealth of Independent States	10 years	The need to aid the countries concerned in their transition to a market economy.

DECISION ADOPTING THE FIFTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES

adopted by the Committee on Trade in Financial Services on 14 November 1997

THE COMMITTEE ON TRADE IN FINANCIAL SERVICES,

Having regard to the results of the negotiations conducted under the terms of the Second Decision on Financial Services adopted by the Council for Trade in Services on 21 July 1995 (S/L/9),

DECIDES AS FOLLOWS:

1. To adopt the text of the 'Fifth Protocol to the General Agreement on Trade in Services'.
2. Commencing immediately and continuing until the date of entry into force of the Fifth 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 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.

DECISION OF DECEMBER 1997 ON COMMITMENTS IN FINANCIAL SERVICES

adopted by the Council for Trade in Services on 12 December 1997

THE COUNCIL FOR TRADE IN SERVICES,

Having regard to the Second Decision on Financial Services adopted by the Council for Trade in Services on 21 July 1995 (S/L/9),

Noting the results of the negotiations carried out under the terms of that Decision,

Having regard to the Decision adopting the Fifth Protocol to the General Agreement on Trade in Services adopted by the Committee on Trade in Financial Services on 14 November 1997 (S/L/44),

DECIDES AS FOLLOWS:

1. If the Fifth 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 March 1999, modify or withdraw all or part of the 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 same period referred to in paragraph 1(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 necessary for the implementation of paragraph 1.