

Mr. Pascal Lamy  
Member of the European Commission  
Trade Commissioner  
Rue de la Loi, 170  
B – 1049 – Brussels

Brussels, 19 October 1999

**Subject : ESN Position Paper on the Temporary Movement of Key Business Personnel**

Dear Mr Lamy,

Please find enclosed the ESN Position Paper on “the Temporary Movement of Key Business Personnel”.

The European Services Network (ESN) recommends that the temporary movement of key business personnel between WTO member states should be placed, as a matter of priority, on the agenda of the round of WTO negotiations that is due to begin in 2000.

Companies engaged in international commerce encounter a common barrier to the conduct of business activity: difficulty in moving key personnel with specialist, technical or managerial skills across borders. The re-structuring and consolidation in many business sectors (mergers and acquisitions) is exacerbating the problems which businesses face in this regard. Barriers to the movement of key business personnel can significantly increase costs, prevent the effective distribution and use of corporate human resources and delay and impede delivery of services to customers. Problems associated with movement of key business personnel have become more acute as companies have expanded their international activities and foreign presence.

Indeed, the issue of mobility of key business personnel is closely connected with the establishment and operation of a commercial presence overseas, and it is in this context that our Position paper has to be taken into consideration, i.e. limited to the intra-corporate mobility of key business personnel. The European Services Network shall be happy to come back with concrete suggestions on this issue at a later stage.

The list of ESN Members supporting the Position Paper is attached.

Yours sincerely,

Pascal Kerneis  
Managing Director

Cc:H.D. Beseler, Director General, DGI; M. P. Carl, Deputy Director General, DGI; R. Madelin, Director, DGI/M

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The European Services Network comprises 51 major European service companies, represented by their CEOs in the European Service Leaders Group and 35 European service federations, representing 22 services sectors. It represents the very large majority of the European service industries that have a direct interest in supplying international services.

## ESN POSITION PAPER ON THE TEMPORARY MOVEMENT OF KEY BUSINESS PERSONNEL

*22 September 1999*

1 The European Services Network (ESN) recommends that the temporary movement of specialist, technical or managerial personnel<sup>1</sup> (referred to hereafter as “key business personnel”) between WTO member states should be placed, as a matter of priority, on the agenda of the round of WTO negotiations that is due to begin in 2000. The objective of this recommendation is the reduction of government measures which impede or prevent key business personnel from timely movement between, and temporary presence in, WTO member states. This paper sets out the issue of mobility of people as it arises in the context of the General Agreement on Trade in Services (GATS), describes its relevance for service providers and provides a brief outline of the opportunities offered by the upcoming GATS negotiations for obtaining more predictable, harmonised and transparent arrangements for the temporary movement of key business personnel.

### **The Issue**

2 Companies engaged in international commerce encounter a common barrier to the conduct of business activity: difficulty in moving key personnel with specialist, technical or managerial skills across borders. The re-structuring and consolidation of many business sectors is exacerbating the problems which businesses face in this regard. Barriers to the movement of key business personnel can significantly increase costs, prevent the effective distribution and use of corporate human resources (including the transfer of knowledge and expertise to locally-based personnel), and delay and impede delivery of services to customers. Problems associated with movement of key business personnel have become more acute as companies have expanded their international activities and foreign presence. Indeed, the issue of mobility of key business personnel is closely connected with the establishment and operation of a commercial presence overseas. In a nutshell, the inability to have the right person in the right place at the right time prevents businesses from meeting deadlines and results in underused employees, unhappy customers and foregone business opportunities.

### **Mobility of persons and the GATS**

3 The foundation for the ESN recommendation that the matter of mobility of key business personnel be pursued is found in the GATS itself. The objective of the GATS is the progressive liberalisation of trade in services. The mobility of key business personnel is an issue for service providers because the GATS defines ‘trade in services’ with reference to ‘modes of supply’, and those modes contemplate the free movement of persons.

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<sup>1</sup> This paper does not aim to address the issue of mutual recognition of qualifications. Even though it may have serious implications for the cross-border movement of the personnel of certain service providers, including the professions, terms of mutual recognition may vary according to the sector; it should therefore be considered a specific sectoral rather than a horizontal GATS issue.

4 The 4 modes of supply as set out in the GATS are as follows:

*Mode 1 Cross-border supply*

The service is supplied from the territory of one WTO member state to consumers in the territory of another WTO member state.

*Mode 2 Consumption in the territory of the supplier*

The service is provided in the territory of the WTO member supplier to foreign consumers present there. This mode involves the movement of nationals of WTO member states across borders to receive the service supplied, an example of which is the tourism industry.

*Mode 3 Commercial presence abroad*

The service supplier of one WTO country provides the service through its commercial presence in the territory of another member. An example of commercial presence is the establishment of a bank branch in another member state. This can involve the temporary movement of key business personnel.

*Mode 4 Delivery of services by natural persons abroad*

The supplier from one member state provides its service through the presence of natural persons in the territory of another WTO country. This involves the movement of individuals to the foreign jurisdiction, but falls short of establishment of a commercial presence. An example of delivery of services abroad would be provision of consultancy services in the territory of a foreign WTO member.

5 The GATS provides for the progressive liberalisation of trade in services through the multilateral negotiation of binding commitments by member states. Specific commitments for provision of access to services are made on two levels: by reference to specific service sectors or sub-sectors, and also by mode of supply. The existence of national laws or procedures which prevent or restrict the movement of key personnel from their home territory into the territory of operations abroad is a difficulty that is encountered across many business sectors. Although three of the four modes of supply could potentially involve movement of people, the mode of supply that is most significantly affected by barriers under various national laws and procedures is the fourth: the delivery of services by natural persons abroad.

**Background: the problem elaborated**

6 The movement of employees across national borders has increased dramatically as a result of the globalisation of commercial activity in recent years. More and more frequently companies find it necessary to transfer individuals, or even international teams with specialist, technical or managerial skills, from one country to another in order to meet increasing customer demand for international services and to ensure the most efficient and effective use of their corporate resources. Such movement of personnel is, in particular, required whenever there is a need for specialised knowledge or expertise in international operations abroad, and in order to further the management and professional training of the workforce in the host country.

7 In the past, the movement of business people abroad generally occurred among more senior personnel. Today, potentially any skilled employee within an organisation could be called upon to provide services in another country. The difficulty is that while commercial activity operates in an increasingly borderless environment, national procedures for

facilitating the movement of key business personnel across borders have not kept pace with these global changes.

8 Whether facilitating a business visit, an international assignment, or an intra-company transfer, companies face many types of bureaucratic hurdles that effectively act as non-tariff barriers to competitiveness. Two of the primary ones are:

- *Visas and Work Permits:* Countries maintain a wide range of cumbersome and time-consuming requirements for visas and work permits. A multiplicity of procedures and lack of transparency can lead to enormous backlogs and lost business opportunities. These systems are complex, untimely and highly unpredictable. As companies operate most efficiently under a clear and concise set of rules that are administered quickly and consistently, the current situation discourages globalisation of the business environment and the free flow of global services.
- *Restrictions on Families:* Most countries also maintain numerous laws that disadvantage family members of foreign employees; unmarried partners also encounter problems. The inability of a spouse (or partner) to secure employment in the country of deployment is the primary reason for the refusal or termination of overseas assignments. Early termination of an assignment is exceedingly costly for the company and for the customer.

9 These impediments to the movement of key business personnel are frustrating, time-consuming, and costly for private enterprise: they inhibit trade and investment across borders and discourage qualified candidates from assuming international assignments. In addition such barriers may disadvantage the national economy which would otherwise benefit from the financial and technological resources as well as the potential for local job creation which typically accompanies the transfer of an employee.

### **Progress to date**

10 Although the issue of international mobility of business personnel was raised during the course of the Uruguay Round, it was not the subject of negotiations in pursuit of a broad agreement on government practices. Nor was it addressed in many specific commitments, in spite of the fact that the problem has been widely acknowledged. Following the conclusion of the GATS, extended negotiations in this area were concluded in June 1995 with a small number of WTO members making improved commitments. The countries that have made the greatest commitments to movement of natural persons are the European Union and its Member States, Australia, Canada, India, Norway and Switzerland. The European Union and its Members, for example, guaranteed opportunities for foreign professionals without commercial presence to perform temporary assignments in several professional and business sectors. Similar commitments have been made by Norway and Switzerland. However, in the WTO itself it has been recognised that “the movement of natural persons generally was not liberalised very significantly”.<sup>2</sup>

11 The question of improving arrangements for the mobility of key business personnel has been considered by a number of business associations and in several international economic fora. These include:

- *European Commission*

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<sup>2</sup> Reference made in the WTO in conjunction with the *Decision on Negotiations on Movement of Natural Persons*.

A proposed directive (COM [1999] 3 final) on the posting of third country workers for the provision of cross border services looks at extending the freedom to provide cross border services to third country nationals who are established in the European Union.

- *TABD*  
The European Union and the United States have been exploring ways to facilitate international personnel exchanges as part of the ongoing Transatlantic Business Dialogue.
- *APEC*  
The Asia Pacific Economic Cooperation forum has established an Informal Experts Group on the Mobility of Business People, to identify issues (including problems of different rules and practices between many Asia Pacific countries) and implement new procedures to facilitate temporary transfers.
- *NAFTA*  
Chapter 16 of the North American Free Trade Agreement entitled 'Temporary Entry for Business Persons' incorporates the provisions of the Canada-US Free Trade Agreement and creates new requirements for movement of temporary business employees from Mexico.
- *FTAA*  
In negotiations in regard to a Free Trade Area of the Americas, the United States has proposed the adoption of a medium term business facilitation agreement by 2001-2002. It would establish simplified procedures for temporary entry of business persons, including procedures for facilitation of business visas and provision for multiple entry visas.

## Recommendations

12 One of the key objectives for the Ministerial meeting in Seattle and forthcoming WTO negotiations is the expansion of the GATS and the introduction of new commitments in order further to liberalise trade in services. The ESN seeks a harmonised set of rules, which will bring certainty, transparency and speed to the issue of mobility of key business personnel. The ESN looks to the new round of GATS negotiations to place the following items on its agenda:

- ***Agreement on common definitions of key business personnel***  
Commitments as to the fourth mode of supply often include definitions of key business personnel which are neither clear nor consistent from one member to another. As a result they are often subject to arbitrary and discriminatory application by regulatory authorities. In future, a precise definition of key business personnel should be agreed by the WTO.
- ***Agreement on transparent process***  
The process of movement of key business personnel would be aided by the production, by each signatory, of a simple explanation of visa and work permit requirements and the publication on an annual basis of statistics relating to the numbers of temporary working visas granted.
- ***Common terms for intra-company transfers***  
Commitments are often limited by pre-employment criteria, economic needs tests, numerical quotas and lack specific time duration. GATS signatories should agree on common terms for key business personnel under intra-company transfers.

- ***Provision for the short term movement of key business personnel***

The majorities of commitments under the fourth mode of supply contemplates intra-company transfers, and do not relate to short term assignments of under one year, where time and ease of transfer are of the essence. The barriers to supply under modes 1, 3 and 4 which impede the movement of key business personnel for short term visits or assignments should be remedied in the next round of GATS talks. A multilateral framework of principles and rules for short-term movement of personnel should be established. Consideration should be given to the creation of an expedited entry process for key business personnel who will work in the host country for less than one year. The administration of such a process should be subject to strict conditions, such as proof of employment in the home country and production of the usual documents required for a visa application. The European Services Business Community will be happy to make suggestions, which might help the implementation of such a process.

- ***Co-ordinated treatment of modes 1, 3 and 4***

Consideration should also be given in the negotiations under the GATS to linking progress on mobility of personnel (mode 4) to the cross border supply of services (mode 1) and the establishment of a foreign commercial presence (mode 3). Although these are distinct legal issues, from a business perspective they are invariably linked. The establishment of an effective commercial presence often requires the movement, on a temporary basis, of specialist personnel to set up and run a new operation. A closer and more co-ordinated approach to these modes of supply under the GATS would not only reflect commercial reality but could also result in a very useful simplification of measures for the benefit of business as well as consumers.

## ***Conclusion***

13 It was generally acknowledged that the Uruguay Round did not arrive at a satisfactory solution to the problem of global mobility of personnel. Although some progress has been made since the conclusion of Uruguay, there is still much to be achieved.

14 The ESN believes that the GATS 2000 round of negotiations provides an opportunity to make further substantial progress towards improving the international mobility of key business personnel. These negotiations should focus on establishing clear and consistent definitions of key business personnel for intra-company transfers (and of related definitions of “work” and “business” for the purposes of visas and work permits). In addition, the negotiations should attempt to determine procedures for the quick and efficient movement of key business personnel assigned to short term projects. This would enable companies better to meet the growing customer need for international expertise, experience and service.

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**LIST OF ESN MEMBERS SUPPORTING THE POSITION PAPER**

**ON TEMPORARY MOVEMENT OF KEY BUSINESS PERSONNEL**

**INSURANCE**

Allianz AG  
AXA Group  
BARC Versicherungs Holdings AG  
Hibernian Insurance Company Ltd  
Norwich Union

*Comité Européen des Assurances - CEA*  
*Bureau International des Producteurs d'Assurances & de Réassurances – BIPAR*

**FINANCIAL SERVICES**

ABN AMRO  
Banque Paribas  
Barclays PLC  
Commerzbank AG  
DIT Deutscher Investment-Trust  
National Bank of Greece

*Fédération Bancaire de l'Union européenne – FBE*  
*European Savings Banks Group – ESBG*  
*European Association of Cooperative Banks - EACB*  
*European Federation of Investment Funds and Companies - FEFSI*

**TELECOMMUNICATIONS**

British Telecommunications plc  
Deutsche Telekom AG  
France Telecom  
Telefónica

*European Public Telecommunication Network Operators' Association - ETNO*

**POSTAL & EXPRESS DELIVERY SERVICES**

Deutsche Post AG  
DHL Worldwide Network SA  
La Poste  
Sweden Post  
TNT Post Group

*European Express Organisation – EEO*  
*PostEurop*

**AVIATION**

Alitalia

*Association of European Airlines – AEA*  
*European Community's Independent Airlines Association – IACA/ACE*

**SHIPPING****AP Møller***European Community Shipowners' Association – ECSA***TOURISM****Sol Melia Hotels****Touristik Union International GmbH***Confédération des Associations Nationales de l'Hôtellerie et de la Restauration de la CE - HOTREC**Groupement des Unions Nationales des Agences et Organismes de Voyages de l'UE – ECTAA***DISTRIBUTION/RETAIL****Marks & Spencer plc****Metro AG****Royal Ahold NV***EuroCommerce***PROFESSIONAL SERVICES - LAWYERS****Cabinet Gide, Loyrette, Nouel****Clifford Chance****Thomas / Deloitte***Conseil des barreaux de la Communauté Européenne – CCBE***PROFESSIONAL SERVICES – MANAGEMENT CONSULTANTS****Andersen Consulting****PROFESSIONAL SERVICES – ACCOUNTANTS****Arthur Andersen****PricewaterhouseCoopers****PROFESSIONAL SERVICES - SURVEYORS****The European Society of Chartered Surveyors****PROFESSIONAL SERVICES - ARCHITECTS****JDR Asociados****Kraemer Architekt BDA***Architects' Council of Europe – ACE***PROFESSIONAL SERVICES – LIBERAL PROFESSIONS***European Council of the Liberal Professions - CEPLIS***ENGINEERING & CONSTRUCTION****BESIX SA****Ove Arup & Partners***European Federation of Engineering Consultancy Associations - EFCA**European International Contractors - EIC**Fédération de l'Industrie Européenne de la Construction – FIEC*

**COMPUTER & IT SERVICES**

IBM Europe, Middle East & Africa  
Sema Group plc

**AUDIO VISUAL**

ARD  
EMI Europe  
UGC

*Association of Commercial Televisions in Europe -ACTE*  
*Eurocinéma*  
*European Broadcasting Union - EBU*  
*European Film Companies Alliance – EFCA*  
*Fédération Européenne des Réalisateur de l’Audiovisuel – FERA*  
*International Federation of the phonographic industry – IFPI*

**PUBLISHING, INCLUDING MUSIC PUBLISHING**

Bertelsmann

*European Publishers Council*

**ADVERTISING & MARKETING**

*European Advertising Tripartite - EAT*  
*European Marketing Confederation - EMC*

**ENERGY SERVICES**

Fortum Corporation

*Eurelectric*

**CONTRACT CATERERS**

Van Hecke BV

*Fédération Européenne de la Restauration Collective – FERCO*

**ENVIRONMENTAL SERVICES / UTILITIES**

Suez-Lyonnaise des Eaux  
Vivendi

**GENERAL**

Daimler-Chrysler Services (DEBIS)  
UNICE

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