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# European Services Industries Priorities for the EU-Thailand Free Trade Agreement

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## Executive Summary

- The European Services Forum strongly supports the negotiations towards an ambitious EU-Thailand Free Trade Agreement and welcome the resuming of the talks.
- The EU is Thailand's fourth largest trading partner, but bilateral trade does not match the importance of the two partners. EU-Thailand FTA will contribute to increase bilateral trade.
- Bilateral trade in **services** between EU and Thailand in 2021 amounted to €8.15 bn, with EU exports amounting for €5.65 bn and imports amounting to €2.5 bn. The €3.14 Bn benefit compensate the goods deficit, but the trade balance is still negative (-€5.6 Bn). But trade in services is under-developed in Thailand (except tourism services) compared to its potential. The FTA will be an instrument towards more trade and investment in services.
- ESF takes note that Thailand has signed bilateral FTAs, notably with Australia, New-Zeland and Japan, plus the ones through the ASEAN, and more recently joined the RECP. Thailand is also negotiating revised FTAs and new modern FTA with other countries like EFTA countries and Canada. ESF calls upon the negotiators to do their utmost so that the European services companies will obtain at least the parity with the best FTA signed by Thailand but considers that so far, the level of commitments remains rather low and call for more market access in trade in services.
- At the end of the Uruguay Round, Thailand GATS commitments were very weak. And this remains today the only bidding elements towards the European Services companies. The FTA must seriously improve market access to EU service businesses.
- ESF is closely monitoring development of the Thai Foreign Business Act (FBA), which has created serious concerns in 2007, and takes note of some improvements for foreign investors. However, significant restrictions and burdensome regulatory requirements on market entry and foreign equity participation in several services sectors remain, and we urge EU negotiators to include improvements into the FTA.
- Given the strong interest of services companies in public procurement both for services contracts and works/infrastructure contracts, ESF calls for a comprehensive market access to public procurement for services in the FTA negotiations, with substantive coverage of all public institutions and entities.
- The FTA should include a strong Horizontal Chapter on Disciplines for Domestic Regulation, rules on State-Owned Enterprises, and strong provisions in the Digital Trade Chapter, including on cross-border data flows.
- Transport, express delivery and logistic companies and customs agents (which are all services providers) register a long list of problems with procedures and requirements for imports, exports and/or transit of goods in Thailand that the FTA negotiations should aim at improving.
- On Trade and Sustainable Development, ESF encourages the EU to negotiate similar level of commitments with Thailand than the ones negotiated with the most recent EU agreements.
- Thailand did not take any GATS commitments in many services sectors. ESF goes into the details of all services sectors in the last section of this Position Paper, makes some comments and recommendations for the consideration of the negotiators (in sectors like professional and business services, courier and express, construction services, distribution services, insurance and financial services, transport services, etc).

# **I. POLITICAL AND ECONOMIC BACKGROUND: THAILAND IN ASEAN**

## **1) EU trade relations with the ASEAN -**



Thailand is a founding member of the Association of Southeast Asian Nations (ASEAN), established in 1967, which gather ten countries (Brunei Darussalam; Burma (Myanmar); Cambodia; Indonesia; Laos; Malaysia, Philippines; Singapore; Thailand and Vietnam). The ASEAN region is a dynamic market with some 660 million consumers and ranks as the eighth economy in the world. The countries as a group are the EU's third largest trading partner outside Europe, after the US and China, with more than €200 billion of trade in goods in 2021. Bilateral trade in services amounted to € 92.7 billion in 2021. The EU is ASEAN's second largest trading partner after China, accounting for around 14% of ASEAN trade.

Ensuring better access for EU exporters to the dynamic ASEAN market is a priority for the EU that is an objective that the European Services Forum encourages. Negotiations for a region-to-region trade and investment agreement between the EU and ASEAN were launched in 2007 and paused by mutual agreement in 2009 to give way to a bilateral format of negotiations. These bilateral trade and investment agreements are conceived as building blocks towards a future region-to-region agreement. At the regional level, the European Commission and the ASEAN Member States continue to undertake a stocktaking exercise to explore the prospects towards the resumption of region-to-region negotiations. A joint EU ASEAN Working Group for the development of a Framework setting out the parameters of a future ASEAN-EU FTA gathers at a regular basis.

Negotiations with Singapore and Malaysia were launched in 2010, with Vietnam in June 2012, with Thailand in March 2013, with the Philippines in December 2015 and with Indonesia in July 2016. We take note that so far, the EU has completed negotiations for bilateral agreements with only two of them (Singapore in 2014 – entry into force in November 2019 - and Vietnam in 2015 – entry into force in August 2020) while negotiations with Thailand, Malaysia and the Philippines are currently on hold. Negotiations with Indonesia are still ongoing and are used to further deepen EU-Indonesia trade and investment relations. ESF follows closely these talks and has adopted a [detailed position paper separately](#) on this important agreement in 2021. We understand also that negotiations of an investment protection agreement are also under way with Myanmar (Burma) but were unfortunately halted in 2017.

## **2) EU Bilateral trade relations with Thailand**

ESF [contributed](#) to the Questionnaire issued by the Directorate General for Trade in May 2013. This Position Paper reiterate many aspects of that contribution, as not much has changed in Thailand for European services providers since. The negotiations at that time started well and negotiators had 4 rounds of talks, where services trade was discussed. On 22 May 2014 however, the Royal Thai Armed Forces, led by General Prayut Chan-o-cha, Commander of the Royal Thai Army (RTA), launched a coup d'état against the caretaker government of Thailand, following six months of political crisis. On 23 June 2014, the European Council decided to [suspend all official talks](#) with Thailand.

After assessing progressive improvements on the front of human rights and democratic rights, that lead to elections in March 2019, at a meeting in Luxembourg on Monday 14<sup>th</sup> October 2019, EU Foreign Affairs ministers gave to the European Commission the green light to resume negotiations on a trade deal with Thailand. “The Council also stresses the importance of taking steps towards the resumption of negotiations on an ambitious and comprehensive Free Trade Agreement,” the Council announced in a [Press Statement](#). ESF took note that the EU and Thailand have signed a Partnership and Cooperation Agreement – the ‘umbrella’ political agreement that is generally complemented by a trade pact – on 14<sup>th</sup> December 2022 in Brussels on the side of the EU-ASEAN Summit. The Agreement was initialled on 2 September 2022 by the chief negotiators of the European Union and Thailand. The PCA will enter into force once it has been ratified by the EU Member States and Thailand. The Agreement foresees the provisional application upon completion of the necessary procedures by both parties.

ESF welcomes the announcement on 25<sup>th</sup> January 2023 that EU and Thailand, after an eight-year political impasse, will “start consultations with a view to relaunching the EU-Thailand FTA negotiations as soon as possible”. The [announcement](#) was made after a meeting in Brussels of Thailand’s Deputy Prime Minister and Minister of Commerce, Jurin Laksanawisit with European Commission Executive Vice president and Trade Commissioner Valdis Dombrovskis.

It is in this context that the European Services Forum is adopting this new Position Paper.

### 3) Thailand’ economy in figures

Thailand is the 22<sup>nd</sup> largest economy in the world and generated a GDP of €1,220 trillion<sup>1</sup> in 2021. The population reached 71.6 million of inhabitants<sup>2</sup> in 2021. The World Bank Report on “Doing Business”<sup>3</sup> is ranking Thailand on the ease of doing business as number 21 out of 190 in 2020, showing that the country is a real free market economy in the world but still have room for improvement.

Thailand is the third largest market in Southeast Asia and growing. There is a large untapped potential in this country in many services sectors, notably for the logistic services providers as transit hub, particularly for goods destined for/through Myanmar.

With bilateral trade in goods amounting to €35.52 billion in 2021, the EU is Thailand’s fourth largest trade partner (after China, Japan and the US), accounting for 7.5% of the country’s total trade. EU exports reached €13.32 billion, while imports amounted to €22.2 billion, making a deficit of -€8.88 billion. Thailand is the EU’s 26<sup>th</sup> largest trading partner worldwide for trade in goods<sup>4</sup>. When considering trade in services, it first needs to be highlighted that Thailand’s economic share in services accounts only for 55.6% of the country’s GDP and the sector only employs 2 out of 4 jobs<sup>5</sup>. The services sector contribution to employment in Thailand is significantly lower than those of advanced economies. The various few FTA that Thailand has signed with other trading partners have not undertaken serious liberalisation in trade in

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<sup>1</sup> GDP (purchasing power parity ) <https://www.cia.gov/the-world-factbook/countries/thailand/#economy>

<sup>2</sup> World Bank - <https://data.worldbank.org/country/thailand>

<sup>3</sup> World Bank - <https://archive.doingbusiness.org/en/data/exploreconomies/thailand#>

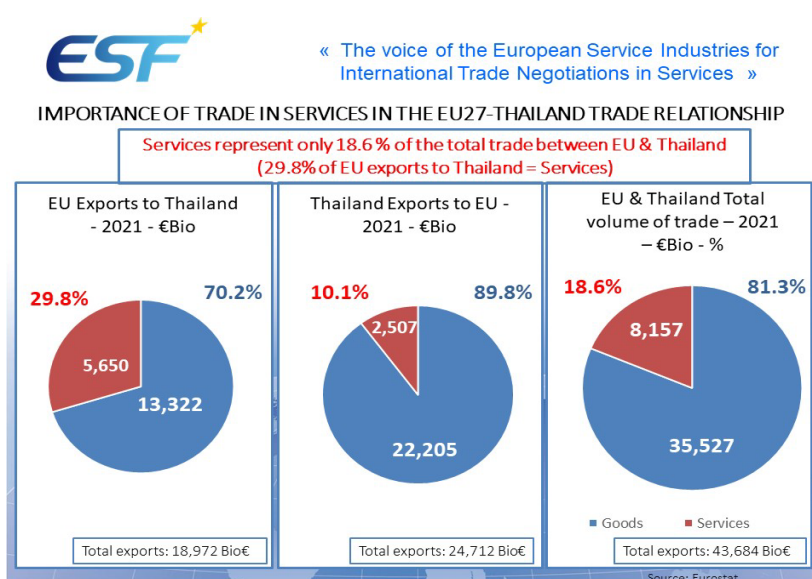
<sup>4</sup> European Commission, DG Trade - [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/thailand\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/thailand_en)

<sup>5</sup> CIA, The World Factbook - <https://www.cia.gov/library/publications/the-world-factbook/geos/as.html>

services in Thailand, except may be with Australia. ESF strongly believes that the EU-Thailand FTA is a great opportunity to improve this situation of the services sectors in Thailand for the benefit of both parties.

In 2021, imports of services from Thailand to the EU was €2.5 billion while exports from the EU to Thailand amounted to €5.65 billion, which makes an EU surplus of +€3.14 billion. Thailand is the EU’s 24<sup>th</sup> largest trading partner worldwide for trade in services. From 2009 to 2019, Thailand used to have a surplus with the EU on trade in services, but the Covid pandemic has dramatically changed the situation with less Thai export of tourism services. The near future will see whether the balance will come back to its previous situation. Trade in services represents only 18.6% of total trade between both partners, which is rather low compared to other countries of similar economic development. In 2021, Services represent only 10% of total Thailand exports to the EU, a very low level compared to the world average. 29.8% of EU total exports are services. However, European services businesses still do encounter many difficulties (when exporting or investing in Thailand) to access the market due to the numerous barriers. Travel services represented 66% of Thailand exports of services to the EU in 2018, accounting for € 4.3 billion (17% of total exports – goods & services), which demonstrates that Thailand’s trade with the EU is very much dependant on tourism. The Covid19 pandemic with the massive reduction of travel have had an enormous impact on this volume in 2020 and 2021, going down to 23% (€575 million). In 2021, the biggest services sector of exports by the EU to Thailand is “telecommunications & IT services” with 37.5% of exports, followed by transport and “other business services” (see ESF statistics attached and here).

Those figures are based on the Balance of Payments (BoP) methodology, which in fact minimize significance of international trade in services. When looking in terms of Global Value Chains (GVC) and analysing under the Trade in Value Added (TiVA) methodology, it appears that the services value-added in the content of both goods and services exports from Thailand globally reached 43.3% in 2016. Services represent 58.9% of all EU exports globally (goods & services). This demonstrate that trade in services plays a bigger role than the BoP figures tell, and it needs to be taken into consideration by the two parties during the negotiations.



When looking at foreign direct investments, Thailand is one of the most important destinations of European investments within ASEAN with €20 billion of outward stocks in 2020 (EU27). The

EU is the second-largest investor in Thailand after Japan. In 2020, Thailand outward stock in the EU was €3.8 billion<sup>6</sup>.

#### **4) Thailand RTAs & FTAs with other trading partners**

First, as already mentioned above, Thailand is part of ASEAN. ASEAN countries have decided to create the ASEAN Economic Community (AEC), which aims at creating a single market between these countries. The blueprint for the establishment of AEC was adopted on 20 November 2007 in Singapore. We understand and welcome the fact that, in the framework of the forthcoming ASEAN Economic community (AEC), Thailand is currently developing a long-term strategy for the services sectors. Thailand would be preparing some reforms aiming at liberalising trade in services under the ASEAN Framework Agreement on Services (AFAS) and the AEC Blueprint. Major services sectors namely business services, communication services, construction and related engineering services, distribution services, education services, environmental services, health related and social services, tourism and travel related services, recreation, cultural and sporting services and transport services, are included under the AEC schedule of commitment. As of the 9th AFAS Package signed in 2014 by the ASEAN economic ministers in Myanmar, ASEAN member states have made commitments to liberalise a wide range of service sectors and subsectors, ranging from 90 to 108 subsectors out of a total 128 subsectors. The 10<sup>th</sup> package was meant to open up further 6 other sectors in 2019, including some digital services sectors. It is however unfortunately difficult to see concrete progress from Thailand, on whether it has put in place the necessary changes to support the AFAS target of 70% foreign equity allowance in all service sectors (ASEAN equity), and whether such a strategy also allows more non-ASEAN foreign equity. ESF encourages the Commission to foster these reforms by making relevant requests in the FTA.

We take note that Thailand, as an ASEAN member, concluded five FTAs: 1) ASEAN–China (into force in 2010); 2) ASEAN–India (into effect on 1 January 2010), 3) ASEAN–Korea (the agreement on trade in goods entered into force in 2007, and the ASEAN-Korea Trade in Services Agreement entered into force in May 2009). We understand that negotiations are ongoing to upgrade these three agreements to modernised them. 4) the Agreement of Comprehensive Economic Partnership among Member States of the Association of Southeast Asian Nations and Japan entered into force in 2008, but did not include trade in services. (We understand that in 2013, ASEAN and Japan have started negotiations to include trade in services and investment, including market access commitments, but these talks are still ongoing.); and 5) ASEAN–Australia–New Zealand. AANZFTA entered into force in January 2010. This agreement was already considered the highest quality of ASEAN's FTAs with its partners, and has been upgraded at the end of 2022. Finally, the negotiations with ASEAN + 5 (China, Japan, South Korea, India, Australia and New Zealand) called “Regional Comprehensive Economic Partnership (RCEP)” was signed in November 2020, and entered into force for ten signatories on 1<sup>st</sup> January 2022, including Thailand. The services chapter of RCEP is not considered as really advanced. Thailand has in addition expressed an interest in becoming a negotiating party to the Comprehensive and Progressive Transpacific Partnership (CP-TPP), but no formal decision has been taken yet.

Second, Thailand has already many bilateral trade treaties or FTA agreements already in force. Thus, these FTAs create advantages to the providers from these partners and put EU companies in a disadvantage position. Thailand has bilateral FTAs with Australia, New Zealand, Japan, India, Peru and Chile. We looked closer to the three first of these FTAs:

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<sup>6</sup> Eurostat [BOP FDI6 POS](#)

- In October 2003, Australia and Thailand finalised negotiations on a comprehensive free trade agreement. The text was formally signed by the two countries in July 2004 and came into force on 1 January 2005. It was Thailand's first FTA negotiated with an industrialised country and its first "comprehensive" FTA. This means it covers not only trade in goods, but also trade in services, protection of intellectual property and new privileges for investors. The FTA has increased access for Australian investors in Thailand, permitting majority Australian ownership for businesses in certain sectors including mining operations, construction services, restaurants and hotels, tertiary education institutions, maritime cargo services and more. It has also facilitated business by easing visa and other requirements for the temporary entry of Australian business people to Thailand, including through reduced paperwork, access to a one-stop visa and work permit service, and extension of the maximum length of stay under business visa arrangements. This agreement therefore includes some features that it will be important for the EU to obtain for European services providers.
- The New Zealand-Thailand Closer Economic Partnership agreement was signed on 19 April 2005 and took effect on 1 July 2005. The Parties agreed to "enter into negotiations on trade in services within three years from the date of entry into force of this Agreement, with the aim of concluding an agreement to liberalise trade in services between the two Parties as soon as possible". In November 2011, a joint general review of the CEP found the agreement had created significant trade and economic benefits for both countries. Since then the two countries have been working together to modernise the agreement under a "CEP refresh plan". This includes extending the CEP to include services and government procurement, but to date services are not included in the NZ Thailand CEP. Services trade with Thailand is covered in [AANZFTA](#).
- The Japanese and Thai governments started exploring a possible bilateral FTA in 2001-2002, but official negotiations didn't start until February 2004. They concluded their talks in April 2007 and the Japan-Thailand Economic Partnership Agreement (JTEPA) came into force on 1 November 2007. The FTA is comprehensive, covering trade in goods and services, investment, intellectual property rights, agriculture, competition policy, etc. However, a preliminary analysis of the schedule of commitments in the services by Thailand does not show tremendous progress. However, any improvement compared to the general binding situation (WTO Uruguay Round) should be also obtained by the EU, if not possible to get better.

Finally, in addition to the suspended talks with the EU, Thailand has on-going trade negotiations towards free trade agreements with EFTA countries (Iceland, Liechtenstein, Norway and Switzerland), Pakistan, Sri-Lanka, Turkey and more recently the ASEAN-Canada FTA.

We will urge the European Commission negotiators to do their utmost so that the European services companies will obtain at least the parity with the best FTA signed by Thailand, and in particular with the treatment that Australian services suppliers when doing business in Thailand.



## **II. HORIZONTAL ISSUES FOR THE TRADE IN SERVICES NEGOTIATIONS**

In this section, we will set the priorities that are common to all services sectors in the framework of the EU-Thailand FTA negotiations. The sector specific priorities will be examined into details in Section III.

### **1) Starting level of the services negotiations**

The FTA must dramatically improve the possibilities for European companies to better trade and do business in Thailand. At WTO level, at the end of the Uruguay Round in 1995, Thailand has undertaken a **poor GATS Schedule of Commitments**, and this **remains today the only bidding elements towards the European Services companies**. The DDA GATS Offer of Thailand was also disappointing. Thailand made no offer and no commitments in many services sectors, and where commitments were made, they were not impressive. This must be remedied in the FTA.

We urge the European Commission negotiators to do their utmost so that the European services companies will obtain at least the parity with the best FTA signed by Thailand, as described here above, and in particular with the treatment that Australian services suppliers are granted when doing business in Thailand. When available, we will provide some information and requests on some specific sector or area in the course of this position paper. ESF also calls the EU negotiators to monitor closely the on-going talks aiming at reviewing services commitments in the ASEAN FTAs or in the Regional Comprehensive Economic Partnership negotiations.

### **2) Scheduling Method**

Given that the EU has negotiated with its two first partners of ASEAN, namely Singapore and Vietnam, by using the **positive approach**, it seems appropriate to use this method as well for Thailand. This method however should not prevent the negotiators from aiming at the most ambitious market access commitments by Thailand in all modes of supply.

### **3) Movement of natural persons (mode 4)**

The question of mobility of the service suppliers is a key priority for businesses in the EU-Thailand FTA. It should cover temporary movement only and not permanent migration. Negotiators should notably work on the possibility to allow faster Business Visa and Work permits delivery procedures for all categories of natural persons covered under Mode 4. Regulations and processes regarding e.g. work permits/visas/urgent duty notification should be simplified.

As for Mode 4 (temporary movement of natural persons), in the GATS DDA Offer, Thailand has made new commitments for business visitors entering to start a commercial presence and defined explicitly the categories of intra-corporate transferees allowed for temporary entry. But, in general, the mode 4 offer was not satisfactory, and we hope the FTA will improve the possibility for high skills services providers to get access to Thailand with greater flexibility. The DDA revised offer on contractual service suppliers did nothing new and was still very limited both in duration of contracts and sectoral coverage. Better opening should be negotiated for the contractual service suppliers in the FTA, similar to the one granted to Australia, or even better.

In particular, we take note that Thailand has undertaken commitments on the temporary mobility of Australian suppliers that the EU should also negotiate:

- Thailand committed to grant a visa and work permit for **up to five years' stay** for all Australian citizens being transferred to work in Thailand within the same company (to be renewable annually) (previously one year).
- Thailand committed to grant a visa and work permit for **up to three years' stay** for all Australian citizens entering Thailand to work on the basis of a contract with an Australian or Thai company other than their employer in Australia (to be renewable annually) (previously one year).
- Thailand will not require a work permit for Australian citizens who are business visitors conducting business meetings in Thailand for **up to 15 days, and up to 90 days for APEC Travel Card Holders**. EU citizens cannot hold an APEC Travel card, but the EU grants 90 days permit for business visitors.
- Thailand will consider applications for visas and work permits submitted by an employer on an applicant's behalf and **advise in advance** of approval and (with visa to be granted on arrival subject to identity verification).
- Thailand will permit all Australian business visitors **access to the one-stop visa and work permit service** (previously restricted to visitors representing or employed by major investors). This would be highly appreciated for European visitors also.
- Thailand will permit all Australians who hold work permits to **participate in business meetings anywhere in Thailand**, including locations not specified in their work permits (previous work permits had to be changed if any work was to be conducted in a location not specified in the permit).
- Thailand will **reduce the number of documents required** from Australians for work permits and renewals and work permits.

#### 4) Foreign direct investment regimes

ESF calls for an FTA which covers pre-establishment commitments as well as a post-establishment protection.

Concerning pre-establishment, the FDI chapter should allow companies to establish in any legal form that they see fit for them, especially legal form that allows owning and controlling their establishment. Therefore, the EU-Thailand FTA should remove, as far as possible, all kind of control of foreign ownership, like remaining equity caps, or limitation imposed by any Thai investment authorities. Any Foreign Direct Investment (FDI) screening should be restricted to the minimum number of sectors as possible, and the criteria should be transparent.

The government plays a major and active role in promoting FDI in the form of incentives offered by the Board of Investment (BOI). The Act of Investment Promotion (B.E. 2520 (1977)) has authorised the BOI to push for domestic and foreign investment that are beneficial for the development of the country. After 15 years, Thailand has finally updated its investment policy which came into effect in 2016 and will last until the end of 2021.

Although Thailand's FDI framework is generally open in the manufacturing sector, there remain significant restrictions and burdensome regulatory requirements on market entry and foreign equity participation in several services sectors. According to the Foreign Business Act B.E. 2542 (1999), foreign participation is allowed in a range of business activities, such as brokerage services, wholesale and retail trade, construction, hotels and auction business.

But the Foreign Business Act (FBA) required foreign companies in nearly all services sectors across the board to have majority share ownership by a Thai citizen (i.e. foreign ownership is restricted to 49%). ESF had considerable concerns about the attitude toward foreign investment shown by the Thai government in the years 2006-2007, which has created a rather negative atmosphere. Indeed, a revision of FBA was adopted by the Cabinet in April 2007. Thailand tightened the law in some areas by adding new criteria used to qualify companies as “alien”, referring not only to ownership limitation but also to the majority of voting rights and management controls. In addition, various administrative procedures were put in place, like the obligation for companies with foreign shareholding of 40% and above to disclose the source of funding of Thai shareholders. Concerns have been raised about new regulations that appear to impose criteria that could restrict foreign participation in telecommunications, insurance and logistics sectors. The 100% foreign ownership that was allowed for retail and wholesale businesses were abolished in the new FBA.

As we understand, in 2017, The Thai government was working to promote and realize a “Thailand 4.0” model through which Thailand would become a high income and extensively connected ‘smart economy’. One aspect of this strategy is attracting foreign investment into business infrastructure and service industries such as banking and financial services. Accordingly, in 2016 regulations were loosened on banking (specifically, commercial banking and representative offices of foreign banks) and insurance investments. Three industries<sup>7</sup> now no longer require a Foreign Business License issued by the Director General, making it easier and quicker to enter the market. Furthermore, plans were in place to extend this waiver to all financial services and telecommunications investments in 2017, but did not materialise. In November 2020, The Thai Ministry of Commerce mooted the intention for FBA amendments, removing telecommunications, finance and software development services from List 3. We understand that once the draft is approved, foreign companies investing in the three service businesses will no longer be required to seek permission from the Foreign Business Commission to operate<sup>8</sup>. This will be more than welcomed and we call upon the EU negotiators to ensure that sectorial regime is consistently reflected in the future FTA so as to avoid further restriction and to reduce risks for foreign investors. Alongside the aforementioned amendments, the Thai Board of Investment regularly promotes specific industries and fast-tracks investment approvals. This often includes the granting of permits to own land and easing of other Foreign Business Act regulations.

Thus, a recent Ministerial Regulation, issued on 13 June 2019, opened up certain types of services from foreign operators to its affiliates, which means that a Foreign Business License will not be required for a registered Thai company having majority foreign ownership. Service businesses providing services to affiliates that do not require a Foreign Business License are as follows: 1) Providing Domestic Loan Services; 2) Leasing Office Space with Utilities; 3) Consulting Services in the following: a) Administration; b) Marketing; c) Human Resources, or, d) Information Technology.

As such, and given the better atmosphere towards FDI in the current government, it is essential for the EU negotiators to keep abreast of on-going promotional activities and directives by the Thai government agencies in order to negotiate as much as possible the binding of the new openings into the EU-Thailand FTA.

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<sup>7</sup> List 1: Business Not Permitted to Foreigners - List 2: Business Permitted to Foreigners under Conditions - List 3: Business Not Yet Permitted to Foreigners. Lists 1, 2, or 3 of the Foreign Business Act in Thailand essentially cover nearly all economic sectors with a few exceptions.

<sup>8</sup> See here: <https://www.bangkokpost.com/business/2012287/3-removals-from-fbas-list-3-rules>

It is also to be noted U.S. services companies have a competitive advantage towards the European since they benefit from national treatment provisions in the US-Thailand Treaty of Amity and Economic Relations 1968 with respect to establishing, as well as acquiring interests, in enterprises of all types for engaging in commercial, industrial, financial and other business activities, with the exception of some sectors. While European companies from sectors listed in Category One of the FBA are absolutely prohibited (unless there is an exception contained in a special law or treaty like the Amity Treaty).

We hope that the FTA will be the right opportunity to re-establish the trust that European investors need to do business in Thailand. The FTA with Thailand should strengthen the framework for investment protection to provide long-term certainty of investment in Thailand, like for example to ensure business concessions are protected as investments, and to grant equitable treatment in the daily conduction of business, where foreign investors are treated as favourably as domestic investors.

#### **5) Public procurement**

The question of public procurement should benefit from particular attention in the FTA negotiations since Thailand is not a member of the Government Procurement Agreement (GPA). We take note that Thailand is an observer in the GPA, but is not currently negotiating its accession to the GPA.

ESF calls for a comprehensive market access to public procurement for services, with substantive coverage of all public institutions and entities, committing the partners to remove any discrimination in the bidding by any EU or Thai businesses. It is important to increase access for services companies to all public entities that are using public procurement in their functioning. This is obviously true for the construction services and construction related services, such as architecture and engineering services, urban planning, etc. All public administrations and entities also need for their daily activities to procure telecom and IT services, insurance and banking services, transport and logistic services, cleaning and catering services, legal and accounting services, etc.

The Chapter on Public procurement should also ensure transparency of the tender process and provide a portal for one single access of all tenders. Negotiators should also explore the possibilities to negotiate commitments related to Public-Private Partnership, which is of great interest to companies in transport, environmental and energy related services, and hence could contribute to fight against climate change.

#### **6) Rules on State-Owned Enterprises (SOEs)**

The Agreement should also look at stating specific rules to ensure that the competition legislation also applies to the state-owned and state-sponsored enterprises (SOEs) that compete in commercial markets. These rules could be part of the provisions in the competition chapter of the agreement or in a specific chapter on rules for State-Owned Enterprises. Consideration could be given to the EU regime on state aids, which set obligations of transparency to state owned companies in the EU, ensuring that the companies have transparent accounting rules and forbid market distortive cross-subsidisation transfers among different department of a state owned and state-sponsored company.

## 7) Digital Trade Chapter

Telecommunications services, ICT services and digitisation in general are engines for growth, competitiveness and job creation in our modern economies. Trade itself is unthinkable without the use of digital technology. Trade increases demand for ICT services and those services are an enabler of global supply chains, which in turn drive global growth.

### a) Digital Services

A Digital Chapter of the EU – Thailand FTA should include provisions on cross-border data flows as they are the real backbone of the digital economy and are crucial to boosting growth in all sectors of the economy, including small and medium-size enterprises. The commitments taken on this issue should be applied across all services sectors, including financial services. Any exceptions to these provisions should be limited to legitimate public policy objectives and only in full compliance with the provisions of GATS covering general exceptions (GATS Article XIV). With the objective of enhancing trust of users and certainty of companies, and thus trade in goods and services, it is essential that businesses comply with data protection and security rules in force in the country of residence of the data subjects, in particular with the protection of personal data. We take note and welcome the fact that in 2019 Thailand adopted the Personal Data Protection Act that is largely aligned with the EU General Data Protection Regulation. Partial enforcement started in May 2020 and full enforcement was expected from June 2021. We call upon the negotiators to ensure that the FTA will improve cross-border data flow by taking steps to address challenges that hinders building of trust for data transfer; and to provide common frameworks and rules for digital trade that will allow businesses to connect with partners more seamlessly.

The text of the FTA should also look at ensuring that cross-border data flows are not limited by a requirement of establishment of a local presence; with only few mutually agreed and well justified exceptions. The parties should allow cross border data flows without a requirement to use locally based servers. The obligation to use local infrastructure or to establish a local presence should not be required as a condition of supplying data services.

### b) Telecommunications networks

As a general rule, preferential treatment to national suppliers should be prohibited in the use of local infrastructure, national spectrum, or orbital resources. There should also not be any preferential treatment in regulating State Owned Enterprises. There should be a level playing field for all licensees subjected to regulations. FDI limitations and other discriminatory restrictions e.g. related to citizenships at board level should be lifted. The Schedule of Commitments from Thailand in telecom services is of low level, and Thailand did not commit to the Basic Telecommunication Reference Paper, where disciplines requirements for the regulatory authorities are set (political independence of the regulator, interconnectivity obligations, etc.). Such requirements will need to be established into the bilateral agreement.

## 8) Domestic regulation

Most regulations are published only in Thai language, which creates difficulties for foreign traders to understand and comply with new regulations. Furthermore, according to reporting by NACC (National Anti-Corruption Commission), all projects with government customers with a value exceeding THB 500,000 are required to disclose project revenues and costs. Preventing corruption, violations of fair competition and other improper business activity takes the

highest priority for European companies. However, while we support the Thai government's efforts to fight corruption, this regulation lacks transparency and clear rules. That is why it is especially difficult for foreign companies to comply with some regulation thus making them more susceptible to penalties or even blacklisting. Even more important the threshold of THB 500,000 is extremely low and should be raised to a more reasonable level. These examples demonstrate that lack of proper understanding of domestic regulation can be a clear impediment to trade.

ESF believes that the FTA should include a strong Horizontal Chapter on Disciplines for Domestic Regulation. This chapter should establish obligations towards establishing basic rules of better transparency in licensing requirements and procedures, qualification requirements and procedures that affect international trade in services. Furthermore, it is unfortunate that Thailand is not taking part of the Joint Statement Initiative on Services Domestic Regulation supported by more than 60 WTO members and that should lead to agreed disciplines on that matter. It is therefore even more important to set disciplines on domestic regulation in the FTA with Thailand. The examples of the domestic regulation subsections that figure both in the regulatory framework section of EU-Singapore FTA and EU-Vietnam FTA should serve as a basis for such chapter. It would be appreciated if the obligations of transparency would apply to all services sectors, irrespective of the market access specific commitments undertaken by the parties.

Such a chapter of the FTA could also include additional elements, related to efforts towards regulatory coherence and some principle about regulatory cooperation.

a) Regulatory coherence

Principles such as regulatory transparency and accountability, prior consultation with stakeholders before adoption of new or revised rules, impartiality and due process with regard to licensing and qualification requirements and procedures, right of appeal, etc. should be applied systematically at all levels of the FTA market regulation, to help in limiting future degrees of regulatory divergence. Funding and performance evaluation of regulators are also important to ensure sound governance of regulators and should be upheld in the FTA.

b) Regulatory cooperation

The FTA could establish a mechanism by which the regulators would agree to meet and exchange information. However, the regulators would remain independent and would not be subject to any obligations of result. Thus, the chapter should obviously not be subject to the Dispute settlement system established by the FTA.

The text could also include sector specific disciplines, either in the sector specific chapters of the FTA, such as on Telecommunication services, on Financial services, etc. or in sector specific annexes attached to the horizontal regulatory cooperation chapter. All specificities should indeed be taken into consideration and the regulators themselves are better positioned to set up specific arrangements, as they would see fit for their own sector.

**9) Customs and Trade facilitation**

The FTA should ensure that customs simplification and trade facilitation measures are included in the most optimal manner. Transport, express delivery and logistic companies and customs agents (which are all services providers) register a long list of problems with procedures and requirements for imports, exports and/or transit in Thailand that the FTA negotiations should aim at improving:

- Customs Guidelines should be made clear and concrete to avoid any chance of ambiguity, e.g. classification and description of goods in customs books should be broad and regularly updated. Official help lines should be installed to provide support.
- Implementation of paperless clearance including e-signature: Even though e-signature has already been implemented in declaring and submitting customs entry, EDI (Electronic Data Interchange) is not yet fully established. Hardcopy documents must still be inspected at customs. Imported e-commerce of restricted LV shipments such as supplement and cosmetics require an original Thai ID or foreign passport for the receiver to register with Customs in person before clearance can be made. The EDI process is still inefficient, especially with regard to the import of chemical and DGR cargo (dangerous goods regulations). Thai customs ask for 100% MSDS Sheet (material safety data sheet) which actually is uncommon globally as this can lead to copyright infringement. Thailand should fully adhere to EDI usage including the standard document formats as defined therein and refrain from additional document requirements.
- The “Thai flag vessel”-regulation in contracts with public authorities obliges companies to ship goods on vessels under Thai flag when importing to Thailand. This results in higher freight costs and excessive bureaucratic burdens. This puts foreign companies at a comparative disadvantage. If not adhered to, importers are subject to twice the freight rate plus interest charges. Thailand should abolish this regulation.
- When shipping goods, some items require import licenses which are difficult to acquire. This can result in mixed shipments being delayed at their respective points of entry. This specifically concerns DGR cargo and sophisticated items. As for DGR cargo, Thai Customs and the Thai Department of Industrial Works require disclosure of 100% of the composition of the respective items. This can cause problems for companies with respect to IPR protection. General WTO practice is approximately 60% disclosure.
- Tariffs on all industrial products should be removed under an EU-Thailand FTA to provide for fair competition. In particular, tariffs on energy products and energy transmission equipment should be cut to zero. EU suppliers are put at a competitive disadvantage, especially with regard to imports from Chinese companies, which enjoy zero duties for their exports to Thailand.
- **Transit procedures** are very burdensome, which particularly affects road freight services. Bonded goods in transit through Thailand is only recognised in case the full truck load (FTL) bound for a destination outside Thailand for the one and same consignee (i.e. goods in transit can only be carried for one consignee). For multiple consignees and multiple destinations, Customs clearance is required at first entry point of entry in Thailand respectively last outgoing point from Thailand. Current Customs regulations do not allow co-loading in the same vehicle goods in transit and goods with final destination Thailand. In case a transport provider still wishes to do so, a “business case” must be presented to Customs office to ask for permission to co-load. The rules are subsequently applied in a haphazard manner with uncertain and varying outcomes depending on the views of individual Customs officials.
- Customs office does not allow transporter to declare as importer of all LTL cargo on behalf of actual consignee at port of entry. This is due to that transporter does not have the **import license/permit/ specifically for each commodity in the container.**

- The **burdensome transit procedures** create inefficiencies and high costs.
- Customs authorities carry out **excessive inspections and high penalties** even in case of minor administrative breaches. Thailand's National Single Window application, known as the Paperless clearance system, was launched in 2008 (full implementation was planned for 2013). While the new system has enhanced the clearance process, the new Customs Act B.E. 2560, General Provisions, Section 8 indicates that the Customs Director General requires importers of documents to be translated into Thai.
- This requirement is not trade friendly and is not aligned with international best practices where errors in translation can lead to inadvertent penalties. This is due to the fact that Customs has a system of reward/commission in case a Customs official finds cases of non-compliance.
- In addition, the customs clearance system is not fully automated and still requires some manual procedures, which adds to complexities and time.
- Burdensome and non-transparent Customs official fees: Thai Ministerial Regulations on Fee Determination indicate that:
  - “(4) Fees for overtime service
    - (a) Request for special services to be made at the Customs Office:
      - ["Knock Door" Fee]
        - (1) Inward Aircraft: 300 Baht per person/importer....
      - (b) Service onsite at a bonded warehouse, a godown, a place of security, a legal quay or a customs office for a customs clearance: ["Customs Overtime" Fee]
        - (1) Inward Aircraft...
          - (a) From 0830-1630 hrs of National Holiday : 200 baht/goods declaration
          - (b) From 1630-2400 hrs : 200 baht/goods declaration
          - (c) From 2400-0830 hrs : 200 baht/goods declaration“
- It is unclear what the “Knock-Door” fees are for. It is not transparently determined and calculated and is apparently applied for customs services during overtime. In most cases, they are arbitrarily determined whenever Customs ‘inspects’ a shipment outside of the normal hours. This fee appears to be an overlap with the “Customs Overtime Fee”. In addition, this fee could be imposed multiple times if shipments are not cleared within one Customs shift and can therefore be punitively high. In some cases, these charges exceed the duty and tax bill. In order to avoid overtime charges, the importer has to work with shipper to ensure the shipments will not be picked up from the exporting country say, on Friday so that they avoid weekend clearances in Thailand which will result in higher costs from these charges. This slows down trade in order to avoid these punitive costs. Many times, importers have to determine the relative costs between storing the shipment in the warehouse versus the additional charges from Knock Door and Overtime charges in order to get the shipment released. This increases trade complexity, processing and compliance costs.
- The demand of restricted Low Value import and export such as supplement, cosmetics, instant foods made of Fisheries has risen significantly and a point to note is that these shipments are for personal use and not for commercial use. In 2022, Thai FDA already approved some exemption for limited quantity of goods. However, Express Customs procedures are not allowed these items to be processed through Express Clearance,



requirements such as Customs Registration, affidavits and certificates result in a cumbersome and confusing process. This adds considerably to the customs clearance lead time and on many occasions, leads to abandon shipment and dissatisfied Importers/Exporters. Thai Customs Department should allow exemption for restricted Low Value shipments to be process through Express Clearance which is the core products which Thailand importer/exporter need and that delivery time is critical.

ESF members reserve the right to provide additional information on this issue in complementary separate papers.

#### **10) Other horizontal issues: Trade and Sustainable Development**

ESF takes note of the fact that the EU negotiators are now developing a chapter on Trade and Sustainable Development in FTAs, which will also be included in the EU-Thailand FTA given the political importance of this issue to allow it to be ratified by the EU institutions. We acknowledge that Vietnam has taken up serious commitments on trade and sustainable development in its FTA with the EU and encourage the EU to negotiate similar level of commitments with Thailand.

ESF understands that the intention of the EU Trade and Sustainable Development (TSD) chapter in this trade agreement is to promote long-term cooperation to foster sustainability and promote international standards in its trade relationship with Thailand. It is not envisaged to provide instant solutions to complex issues that are not related to trade, and hence the emphasis must remain on engaging with Thailand in a continuous manner to help develop and implement international standards and regulations in the field of trade and labour and trade and environment.

In this respect, ESF welcomed the European Commission's [non-paper on "Trade and Sustainable Development chapters in EU Free Trade Agreements"](#), and voiced its support for the Commission's proposed approach towards "A more assertive partnership on TSD" with partner countries like Thailand. Improvements to the current practice can be made to strengthen progress in the environment, labour, human rights and other issues addressed in the TSD chapter, such as strengthening cooperation with international bodies and stepping up monitoring of TSD issues. We also understand that the EU made it clear that TSD chapters are an essential part of its FTAs, and that sanctions will be used as a last case scenario in cases of systematic abuse of human rights, labour rights or environment depredation.

### III. SERVICES SECTOR SPECIFIC ISSUES

ESF and ESF members retain the right to come back to the Commission with more detailed sector specific position papers at a later stage. We would like however at this state to highlight the following barriers.

First, Thailand took no GATS commitments in any of the modes for

- a) Taxation services,
- b) Integrated engineering services;
- c) Research and development services;
- d) Real estate services and
- e) Postal/courier and logistics sector.

This must be remedy in the FTA.

The following paragraphs sometimes refer to the Thai revised offer made in the DDA GATS negotiations that ended in 2008, comparing it with the still currently binding commitments of the Uruguay round Thai schedule of commitments. Furthermore, we urge the EU negotiators to ensure that the basis of the market access negotiations with Thailand should be the highest commitments taken to date by Thailand. We can mention in particular the Thai [Schedule of Commitments with Australia](#) (link to a .doc) although that also remain a rather poor and low level (only 8 pages). The one with Japan goes into more depth (see Japan-Thailand FTA [here from page 62 to 141](#)). The best level of reference should therefore be, as far as possible, the [Vietnam Schedule of commitments](#) taken with the EU, both for cross-border supply of services (modes 1 & 2), for liberalisation of investments (mode 3) and for Temporary mobility of Natural Persons for Business Purposes (mode 4) (see Annex 8).

#### 1) Professional and Business Services

**Professional services:** In the professional services sectors (legal, accountant, architecture, engineers, etc.), Thailand's DDA GATS offer made positive moves to remove the 49% equity cap in all of these sectors, scheduling "none" under mode 3. It is welcomed that Thailand tabled "none" commitments for mode 2 and mode 3 with Japan for legal services, accounting and auditing services, architectural services, engineering services, urban planning and planning architectural services. However, Thailand has not taken any mode 1 and 4 commitments, which limits the scope of business.

**Business services:** Thailand has not bound many business services sectors, or only partially, that are important not only for the services sectors per se but also for a competitive functioning of its manufacturing economy (advertising services, management consulting services, services incidental to manufacturing, etc.). Much more Business services must be committed. In particular, equity caps should be lifted in **computer related services**, but there is still a 49% cap with Japan. Thailand permits 100% Australian ownership of companies providing **management consulting services** through a regional operating headquarters or associated company or branch. EU should obtain the same. The previous limit was 49.9%.

#### 2) Postal services

According to section 5 of the Postal Act from 1934, the Thai government has the exclusive right to control and handle postal services. Although the incumbent postal operator, Thai Post, was corporatized in 1999, collection, delivery, dispatch, request for acceptance or handling of letters and postcards fall under a monopoly held by Thai Post, which shares are fully owned by

the Government (Ministry of Finance). Letters and postcards are not adequately defined, and are hence arbitrarily applied. The incumbent postal operator is still operating under an exclusive right, which creates an unfair advantage, since it is also active in other segments which are clearly what can be considered outside of basic postal services (universal postal services). The breach of the postal monopoly by private postal, courier or express delivery operator is currently subjected to a fine of up to THB 20 for each letter and postcard that is delivered from abroad to a Thai addressee (inbound). The current application of this outdated legal framework also gives the incumbent postal operator to impose this fine on delivery of documents/letters from Thailand to an addressee abroad (outbound).

In addition, section 7 of the Postal Act establishes further prohibitions on persons who are involved in the postal service as carriers who normally transport goods or passengers, including their employees and agents, or owners, controllers, or crew members of vehicles travelling domestically and internationally, including their employees and agents. Violation of section 7 of the Postal Act is subject to a fine of up to THB 20 per item.

Thailand commitments for “postal services” (CPC 7511) and courier services (CPC 7512) are “unbound” all across the four modes of supply in the FTA with Japan and Australia, which is really unacceptable.

### 3) Telecommunication services

The **telecommunication** sector is often regarded as strategic, with a multiplier effect on the growth of the economy. Thailand is seeing itself as one of the leading digital hub in ASEAN, being among the firsts which adopted 5G. In addition of the removal of the equity caps, there is an urgent need for ICT reform in Thailand and the FTA is a right opportunity to allow new investor with new technology and management expertise to penetrate that crucial sector. The overall structure of the telecommunication sector has been shaped by the historic regulatory powers of the two State Owned Enterprises TOT and CAT. Both have retained significant rights, in particular in relation to being exempt from Construction Approvals from local authorities despite being normal licensed operators and fully corporatized. This is a substantial barrier as new and existing operators will encounter severe difficulties in obtaining such approvals, forcing them to turn to the two SOE’s for rental of existing networks. The fact these two companies have merged in January 2021<sup>9</sup> into one company, National Telecom (NT), will not facilitate competition in that sector. Thailand should also seek to modernise its telecom regulatory framework and policies in line with international best practice. For instance, both retail and wholesale mobile prices continues to be under regulatory control despite the mobile market being highly competitive. Looking forward, Thailand should strive to adopt agile regulatory governance as per recommendations by the OECD, to ensure fit-for-future regulations in the fast-evolving telecoms sector.

Furthermore, access to spectrum in open transparent auctions are currently under threat with the Ministry of ICT advocating retention of mobile spectrum by CAT for a further period of 11 years despite legislation mandating auction<sup>10</sup>. Any allocation or retention of spectra by the State-Owned Enterprise is clearly discriminatory towards private operators. The major barrier

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<sup>9</sup> See here: <https://www.bangkokpost.com/business/2020127/tot-cat-merger-date-set>

<sup>10</sup> As we understand the current status is: Recent spectrum auctions in past years indicated acquisition of new spectrum bands by mobile operators (i.e. AIS, dtac and True). This is for spectrum bands e.g. 900, 1800, 700, 2600 and mmWave. While SOEs still have legacy allocation in 2100, 2300, 850 through allocation.

for entry is clearly contained in the Foreign Domination Regulations which prevents foreign companies to exercise control over their Thai investments – in breach of the WTO schedule.

In the context of the negotiations to come, substantial telecommunications and Digital chapters should therefore be negotiated with Thailand in order to get an easier access to telecom licenses, free trade for telecom services, and a facilitating approach for services associated with equipment and services resale (including ERS and System Integration).

#### 4) Construction services

In **construction** services sector, key subsectors remain excluded. The scope of Thailand's DDA offer was relatively broad but excluded all of building completion and finishing and "other services" making it difficult for foreign contractors to offer a full service to clients. It is welcome that 49% caps on foreign equity have been removed for some Australian suppliers & investors, who can hold up to 100%. This should be replicated in the FTA with the EU. Civil engineering remains blocked under mode 4 and mode 1 remains unbound.

#### 5) Distribution services

In **distribution**, Thailand has taken no commitments in retail & wholesale, not reflecting the current practice. Better commitments have been taken with other trading partners (notably allowing 100% ownership to Australian retailers and wholesalers) that should be reflected in the EU-Thailand FTA. Further commitments are needed in franchising and mode 1 across the whole distribution services to allow development of e-commerce.

#### 6) Education services

In education services, Thailand permits majority Australian ownership of **tertiary/higher education institutions** specialising in science and technology (up to 60%) (provided it is located outside of Bangkok). The previous limit was 49.9%. This has however not been granted to Japan. ESF urges EU negotiators to obtain similar commitments than those granted to Australia.

#### 7) Environmental services

In **environmental services**, Thailand has taken many full opening commitments in mode 2 and 3 with Japan and these should be replicated for the EU.

#### 8) Financial services

##### b) Insurance services

There are two restrictions limiting the majority ownership by European interests of insurance businesses in Thailand: the 25% shareholding limit in the Insurance Acts and the 49% shareholding limit in the Foreign Business Act. Although there have been announcements made by various Thai government officials that the 25% limit in the Insurance Acts will be lifted there has been no formal notice issued that clearly states that these limits no longer apply from a certain date. ESF has already in October 2012 - in a joint letter with partners of the Global Services Coalition - expressed major concerns about implementation of these rules that would require a number of foreign insurance companies to divest major parts of their investments in Thailand. As mentioned already here above, one of the key conditions necessary for strong, stable levels of foreign investment in Thailand is confidence on the part of the foreign investor

that the regulatory regime applying to their investment will not change to their disadvantage. It is therefore very damaging to investor confidence that rules applying to long standing investments in the insurance industry have been changed to the significant detriment of the non-Thai parties. To address this issue, the European Services Forum supports the proposal put forward by a number of Insurance Associations, namely that the Office of the Insurance Commissioner have a general power to approve foreign shareholdings of up to 100%, including utilising this to approve the continuation of foreign shareholdings grandfathered prior to the 2008 amendments to the Insurance Acts. In any event, no agreement should be signed with Thailand as long as a divestiture threat exists in that sector.

Furthermore, other restrictive measures exist in Thailand that prevents reinsurers to freely conduct business on a cross-border basis and that should be addressed in the trade negotiations. Specifically, the Rules, Procedures and Conditions on Reinsurance of Life and Non-life Insurance Companies BE 2561 (effective from 1 September 2018) have introduced the credit rating requirements, which provide that overseas placement of reinsurance can only be made with a reinsurer with a credit rating of "BBB" from Standard & Poor's (or equivalent) and with retrocession limits of 50% for reinsurers with a rating of BBB (or equivalent).

The use of premium deposit is also widespread within the Thai insurance market, tying up considerable amount of capital; these should be waived for European reinsurers.

In addition, since 2018, the Thai regulator, the Office of Insurance Commission, has only allowed yearly renewable life and health reinsurance business, while all other transactions are subject to regulatory approvals. In practice, many innovative forms of reinsurance are unavailable due to a lengthy and opaque approval processes. These rules limit innovation and legitimate risk transfer without prudential justification, to the detriment of consumers and the market.

#### c) Banking services

In the **banking sector**, the Financial Institutes Act of 2008 permits foreign ownership of a Thai bank up to 25%. Equity ownership above that level, up to 49%, requires the formal approval of the Bank of Thailand. In exceptional circumstances, these limits can be overridden by the Ministry of Finance in order to safeguard a distressed Thai bank. Foreign financial institutions are facing a large number of restriction (including tight operating restrictions: they can have a maximum of three branches, only one of which can be located in Bangkok; other restrictions include high minimum capital requirements and narrow limits on employing expatriate management personnel, etc.). ESF calls upon the EU negotiators to remove these restrictions, in particular on the geographical requirements.

### 9) Tourism & Travel services

In **Tourism & Travel agency**, certain sub-sectors are excluded, which is surprising from a country that is attracting a lot of tourism. Thailand permits majority Australian and Japanese ownership of **major restaurants or hotels** (up to 60%). The previous limit was 49.9%. EU should obtain at least the same commitments.

### 10) Transport services

The **logistics businesses** (covering domestic land, waterway, or air transportation, including domestic airlines) are classified under List 2 of the Foreign Business Act (FBA); while other

services such as packaging and warehousing are classified under List 3 of the FBA. The FBA imposes certain restrictions on equity participation by foreigners in these “List 2” services sectors. Domestic road transport must also comply with the criteria set out in the Land Transportation Act B.E. 2522 (1979) and concerned ministerial regulations.

**Maritime transport services:** Restriction of foreign equity ownership to 49% in maritime transport services could be considered as the most significant barriers for foreign operators, and hence the cap should be removed, or at least increased. This cap is maintained for Japan, but interestingly, Thailand permit majority Australian ownership of companies providing certain **maritime cargo services** (up to 60%). EU Negotiators should aim at getting similar treatment than Australian.

The FTA has to include measures to ensure smooth and fair trade in maritime transport services. More broadly, fair and free competition, without local protectionist measures, are of key importance to European shipping companies. By anchoring clear commitments on maritime transport in legally binding instruments, the EU creates the certainty EU businesses need to invest and operate in a sustainable manner. The FTA with Thailand should thus at a minimum ensure that Thailand will provide reciprocal market access to EU operators (as Thai operators face in the EU) and include provisions on maritime transport services to the fullest extent possible, including:

- a) Commitments towards unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;
- b) Commitments to abolish and abstain from cargo-sharing agreements or reservations;
- c) The ability for EU operators to be granted reciprocal national market access, at minimum feeder services, and all forms of transshipment and movement of empty containers;
- d) Ability to perform multimodal operations;
- e) The ability for EU operators to establish local representations in Thailand.

In addition, EU negotiators should seek to ensure that EU shipping companies can take advantage of new opportunities as they could emerge in Thailand for this sector. This includes the rapidly advancing offshore wind sector to which shipping plays a key role. Concretely, achieving rights for EU operators to **perform services between ports and offshore installations** may merit consideration as a future key parameter in the context of EU trade negotiations with third countries, including with Thailand.

#### **11) Other services not included elsewhere**

ESF also encourages the EU negotiators to seek commitments from Thailand on energy related services, as for instance in the agreement with Canada.

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## List of ESF Members supporting the above Position Paper

- Amfori
- Architects' Council of Europe –ACE
- British Telecom Plc
- BDO
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- BSA The Software Alliance – BSA
- Danish Shipping
- Deutsche Post DHL
- DI – Confederation of Danish Industries
- Digital Europe
- EK - Confederation of Finnish Industries
- EuroCommerce
- European Banking Federation - EBF
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- European Federation of Engineering and Consultancy Associations – EFCA
- Fédération de l'Industrie Européenne de la Construction – FIEC
- FratiniVergano European Lawyers
- General Council of the Bar of England & Wales
- Google
- Huawei Europe
- IBM Europe, Middle East & Africa
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des entreprises de France – MEDEF
- PostEurop
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- TechUK
- Telenor Group
- TheCityUK
- UPS
- Vodafone
- Zurich Insurance