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Brussels, 7 October 2021

Subject: **ESF Position Paper on the European Services sectors priorities in the EU-Indonesia CEPA**

Dear Director General,

The European Services Forum strongly supports the negotiations towards an ambitious EU-Indonesia Comprehensive Economic Partnership Agreement (CEPA). I am writing to you to present the revised in-depth ESF Position Paper where the European services sectors expose our various priorities in these important talks with the largest country in ASEAN. Such a trade agreement will contribute to anchoring the EU trade strategy in South-East Asia, where most of the economic growth will be in the next decade.

The EU is Indonesia's fifth largest trading partner, but bilateral trade does not match the importance of the two partners. EU-Indonesia CEPA will contribute to increased bilateral trade. Bilateral trade in services between the EU and Indonesia in 2019 amounted to €7.5 bn, with EU exports amounting for €5.3 bn and imports amounting to €2.2 bn. The €3 Bn surplus in services trade compensates for the trade in goods deficit, but the trade balance is still negative by nearly -€2 Bn. Trade in services is considerably under-developed in Indonesia compared to its potential. The CEPA will be an instrument towards driving more trade and investment in services sectors.

Indonesia is the largest economy in ASEAN and is currently developing a long-term strategy for the services sectors. It is preparing a number of reforms aimed at liberalising trade in services under the ASEAN Framework Agreement on Services (AFAS) and the AEC Blueprint 2025. ESF supports such reforms and encourages the inclusion of related commitments in CEPA.

ESF takes note that Indonesia has signed bilateral FTAs, notably with Australia, Chile, Japan, plus those through the ASEAN. ESF calls upon the negotiators to do their utmost to ensure that European services companies will obtain at least parity with the best FTA signed by Indonesia, and in particular with the treatment that Australian services suppliers enjoy when doing business in Indonesia. At the

end of the Uruguay Round, Indonesia's GATS commitments were very weak. And these commitments remain today the only binding elements towards the European Services companies. CEPA must seriously improve market access for EU service businesses.

CEPA should also 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, and of course a solid Trade and Sustainable Development chapter, at least similar to the most recent ones negotiated by the EU.

You will find attached the European Services Industries Priorities for the EU-Indonesia Comprehensive Economic Partnership Agreement. In addition to the input on the horizontal issues, ESF goes into the details of all services sectors in the last section of this Position Paper and 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 would like to thank you for taking these comments and recommendations into consideration. We remain at your disposal for any further information.

Yours sincerely,



Noel Clehane
ESF Chairman

Cc: EVP Valdis Dombrovskis Cabinet;
Mr. Filip Deraedt, Chief Negotiator EU-Indonesia CEPA, DG Trade
Mr. Christophe Kiener, Head of Unit, Services & Digital Trade, DG Trade

Brussels, 7 October 2021

European Services Industries Priorities for the EU-Indonesia Free Trade Agreement



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Executive summary

- The European Services Forum strongly supports the negotiations towards an ambitious EU-Indonesia CEPA agreement.
- The EU is Indonesia's fifth largest trading partner, but bilateral trade does not match the importance of the two partners. EU-Indonesia CEPA will contribute to increase bilateral trade.
- Bilateral trade in services between EU and Indonesia in 2019 amounted to €7.5 bn, with EU exports amounting for €5.3 bn and imports amounting to €2.2 bn¹. The €3 Bn benefit compensate the goods deficit, but the trade balance is still negative to nearly -€2 Bn. But trade in services is under-developed in Indonesia compared to its potential. The CEPA will be an instrument towards more trade and investment in services.
- Indonesia is a major economy in ASEAN. Indonesia is currently developing a long-term strategy for the services sectors. Indonesia is preparing some reforms aiming at liberalising trade in services under the ASEAN Framework Agreement on Services (AFAS) and the AEC Blueprint 2025. ESF supports such reforms and encourage the inclusion of related commitments in CEPA.
- ESF takes note that Indonesia has signed bilateral FTAs, notably with Australia, Chile, Japan, plus the ones through the ASEAN. 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 Indonesia, and in particular with the treatment that Australian services suppliers when doing business in Indonesia.
- At the end of the Uruguay Round, Indonesia GATS commitments were very weak. And this remains today the only bidding elements towards the European Services companies. CEPA must seriously improve market access to EU service businesses.
- Given that Indonesia has concluded a new comprehensive agreement with Australia, using the **negative list approach**, ESF will strongly recommend to using this method with the EU as well.
- 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.
- CEPA 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.
- Customs procedures and requirements for imports, exports and/or transit in Indonesia are lengthy and burdensome. ESF makes comments and recommendations for provisions in the CEPA Customs and Trade Facilitation chapter.
- On Trade and Sustainable Development, ESF encourages the EU to negotiate similar level of commitments with Indonesia than the ones negotiated with the most recent EU agreements, including with Vietnam and MECOSUR.
- Indonesia 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: INDONESIA IN ASEAN

1) EU trade relations with the ASEAN -



Indonesia 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 640 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 €210 billion of trade in goods in 2019. **Bilateral trade in services amounted to € 97.5 billion in 2019 (31.7% of total trade).** The EU is ASEAN's second largest trading partner after China, accounting for around 13% 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. We understand that 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, ESF looks forward to learning from this exercise.

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. As of today, the EU has completed negotiations for bilateral agreements with 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 of an investment protection agreement were also under way with Myanmar (Burma), but were unfortunately halted in 2017.

Negotiations with Indonesia are still ongoing and are used to further deepen EU-Indonesia trade and investment relations. ESF follows closely these talks and wants to present in this Document the priorities of the European services sectors in these negotiations.

2) Historical background of EU Bilateral trade negotiations with Indonesia

EU-Indonesian bilateral trade lags relative to its size and in comparison to other ASEAN countries. Indonesia is a country with substantial potential for growth and ESF is supportive of actions that will see the relationship grow with liberalisation in Indonesia as a vital enabler of development.

In line with this sentiment, in late 2009, Commission President José Manuel Barroso and the Indonesian President Susilo Bambang Yudhoyono tasked a Vision Group of eminent persons from both Indonesia and EU to produce recommendations on how to take relations to the next level. The recommendations of the Vision Group were presented to the EU Trade Commissioner and the Indonesia Trade Minister on 4 May 2011 in Jakarta. The joint final Report underlining the Vision Group's recommendations was presented to the public during the dissemination event held in Brussels on 28 June 2011. Mr. Pascal Kerneis, Managing Director of ESF, was one of those tasked to provide EU Business input to the Vision Group.

The report contained a number of findings and recommendation, but a central conclusion is that there is ultimately a strong need for the European Union and the Indonesian Government **to launch a Comprehensive Economic Partnership Agreement (CEPA)**, which will cover a wide range of trade and investment issues. The report is available [here](#). The presentation of the report can be found [here](#).

Excerpts from the report's recommendations:

"9. This Comprehensive Economic Partnership Agreement (CEPA) should be based on a free trade area as the foundation in WTO terms, and have a triangular architecture: market access, capacity building and facilitation of trade and investment. The ambition of the CEPA would be present in all three elements. It is the complementarity and interaction, also over time, of these three elements which will engender the desirable development impact for Indonesia via higher-value added exports and, at the same time, turn Indonesia into a more attractive market for EU goods and services as well as a promising investment location."

"10. In terms of market access, it would consist of a deep FTA. This would imply access liberalisation in goods, services and direct investment, complemented by 'behind-the-border' commitments covering a range of sanitary and technical regulations issues based on internationally accepted requirements or standards where feasible. It should also include commitments on intellectual property rights protection and competition policy, taking note that Indonesia, as one of only few ASEAN countries, already having initiated such a policy. This should be linked with capacity building as well."

"15. For services, liberalisation would have to be "Doha Plus" in various ways. The Vision Group recommends the binding of existing, actual liberalisation as a practical starting point. Beyond that, both partners should commit in a CEPA to certain levels of new openings in key services sectors so as to create new business opportunities. Liberalisation for services would naturally be linked with greater freedom to invest locally in services in Indonesia (whilst in the EU, given 'national treatment', Indonesian investment, which has now started, will find few obstacles)."

"20. Furthermore, in order to increase the magnitude of the benefits of the proposed CEPA, on infrastructure development in Indonesia, the Vision Group recommends to future negotiators of the CEPA to discuss public procurement, notably in public infrastructure. The parties should agree on setting up transparency rules and the negotiation of additional levels of mutual access to the respective public markets."

The European Commission then began a 'scoping' exercise the negotiations were meant to start from November 2011. But a similar exercise also took place in Indonesia, where the government run a "socialisation" exercise, in all the 33 provinces of this vast country with thousands of islands, of the possibility of a CEPA with the European Union, which finally was

not conclusive. The country went then in new elections and trade negotiations were not making any positive attractions for the running candidates.

It is only five years later, following successful exploratory discussions in April 2016 to further deepen EU-Indonesia trade and investment relations, that the negotiations for an EU-Indonesia free trade agreement [were launched](#) on 18 July 2016. Ten full rounds have been held so far up to May 2021. It is important to note that the Free Trade Agreement (FTA) will develop a key aspect of the overall relationship between the EU and Indonesia, which is framed by the [Partnership and Cooperation Agreement](#). That agreement entered into force on 1 May 2014.

ESF [contributed](#) to the Questionnaire issued by the Directorate General for Trade in December 2016. This Position Paper reiterates many aspects of that contribution, as not much has changed in Indonesia for European services providers since.

3) Indonesia's economy in figures

Important to remember that Indonesia is now the world's fourth most populous country (275 million inhabitants in 2021), the world's largest archipelagic state, and the world's largest Muslim-majority nation. Indonesia is the 7th largest economy in the world and generated a GDP of €3,196 trillion¹ in 2019, but given the large population, it makes a GDP per capita of 11,812US\$, ranking 135 in the world. The World Bank Report on "Doing Business"² is ranking Indonesia on the ease of doing business as number 73 out of 190 in 2021, showing that the country has still large room for improvement.

The EU is Indonesia's fifth largest trading partner while Indonesia is the 31 global trading partner for the EU and fifth EU partner in ASEAN in 2020. Bilateral trade in goods amounted to €23.8 Bn in 2019, with a total of EU exports at €9.4 Bn, which makes an EU deficit of €4.9 Bn. Bilateral trade in services between EU and Indonesia in 2019 amounted to €7.5 bn, with EU exports amounting for €5.3 bn and imports amounting to €2.2 bn³. The €3 Bn benefit compensate the goods deficit, but the trade balance is still negative to nearly -€2 Bn.

When considering trade in services, it first needs to be highlighted that Indonesia's economic share in services accounts **only for 45.4% of the country's GDP** - which is really low, among the lowest of the G20 countries - and the sector only employs 2 out of 4 jobs⁴. The services sector contribution to employment in Indonesia is significantly lower than those of advanced economies. The various few FTA that Indonesia has signed with other trading partners have not undertaken serious liberalisation in trade in services in Indonesia, except may be with the recent FTA signed with Australia (2019). ESF strongly believes that the EU-Indonesia CEPA is a great opportunity to improve this situation of the services sectors in Indonesia for the benefit of both parties.

In 2019, imports of services from Indonesia to the EU was €2.237 billion (+98% compared to 2010) while exports from the EU to Indonesia amounted to €5.321 billion (+90% since 2010). Hence, trade in services represents only 24% of total trade between both partners, which is

¹ GDP (purchasing power parity) [Indonesia - The World Factbook \(cia.gov\)](#)

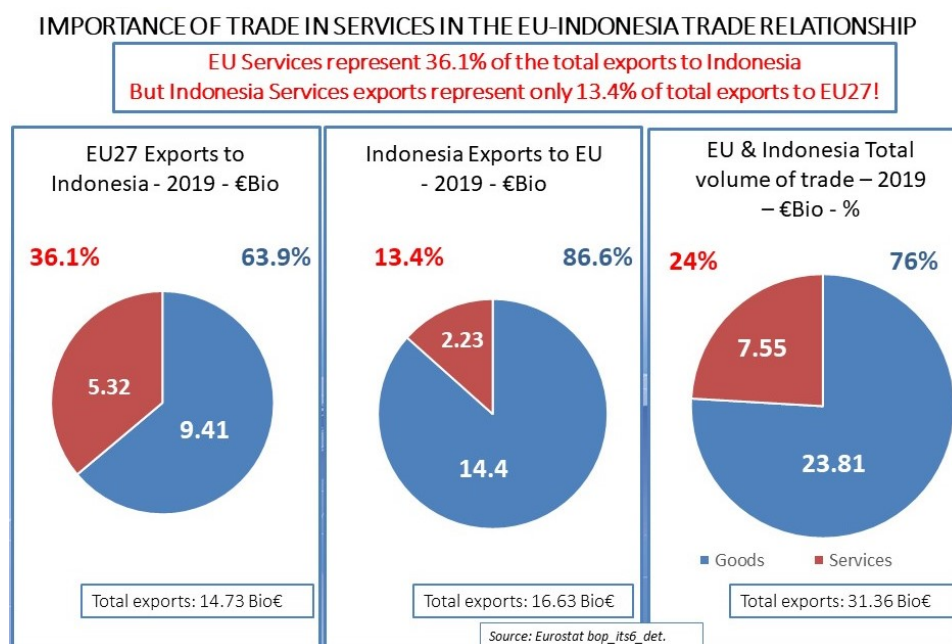
² World Bank - <http://www.doingbusiness.org/rankings>

³ European Commission, DG Trade - <https://ec.europa.eu/trade/policy/countries-and-regions/countries/indonesia/>

⁴ CIA, The World Factbook - [Indonesia - The World Factbook \(cia.gov\)](#)

rather low compared to other countries of similar economic development. But it is important to note that services represent 36.1% of the total EU exports, which is significant and higher than in many other EU trading partners, while Indonesian services exports represent only 13.4% of their total exports to the EU. The difficulties to access the market due to the numerous barriers encountered by the European services businesses when exporting or investing in Indonesia can explain such low level. Travel services represented 53.5% of Indonesia exports of services to the EU in 2019, accounting for € 1.1 billion, which demonstrates that Indonesia's trade in services with the EU is very much dependant on tourism. The Covid19 pandemic with the massive reduction of travel will very likely have an enormous impact on this volume in 2020. The biggest services sector of exports by the EU to Indonesia is "other business services" with 41% of exports, followed by transport (24%), travel and telecommunications & IT services (14%).

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 Indonesia globally reached 35.6% in 2016. This percentage remains however rather low compared to other G20 or other emerging countries. Services represent 58.9% of all EU exports globally (goods & services). This demonstrates however 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, Indonesia is the second most important destinations of European investments within ASEAN with €25.78 billion of outward stocks in 2019 (EU27), however far below Singapore (€222 Bn), and this figure is decreasing since 2016. The EU is the second-largest investor in Indonesia after Japan. In 2019, Indonesia outward stock in the EU was only € 400 million⁵.

4) Potential Impact of Brexit on the EU- Indonesia CEPA negotiations

⁵ Eurostat [BOP FDI6 POS](#)

ESF is considering the impact Brexit will have on the EU27-Indonesia free trade agreement negotiations. In 2018, the European Union²⁸ exported 5.08 billion euros of services to Indonesia. The United Kingdom contributed 749 million euros, or 15% of that total⁶. In the meantime, the UK imported 286 million euros, representing 10% of the total EU import of services from Indonesia (2724 million euros). Also, EU28 foreign direct investment in Indonesia in 2018 was 33.05 billion euros, of which UK outward investment was €6.26 billion (19%). With these figures in perspective, one can consider that the exist of the United Kingdom out of the EU will not have a major impact on the EU-Indonesia trade relationship - and hence on the negotiations of the EU-Indonesia FTA.

5) Indonesia RTAs & FTAs with other trading partners

First, as already mentioned above, Indonesia 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),

Indonesia is currently developing a long-term strategy for the services sectors. Indonesia would be preparing some reforms aiming at liberalising trade in services under the ASEAN Framework Agreement on Services (AFAS) and the AEC Blueprint 2025. 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 Myanmar⁷, 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 10th package⁸ was meant to open up further 6 other sectors in 2019, including some digital services sectors. Finally, on 7th October 2020 in Manila (Philippines), ASEAN ministers signed the ASEAN Trade in Services Agreement (ATISA)⁹, strengthening the ASEAN “Single Market” in services, using for the first time the negative list approach and taking commitments to schedule list of “non-conforming measures”. ESF welcomes this move and will monitor the development of the implementation of this agreement. One notes however already that long transition period (to schedule the lists) of five years was granted to members, with even longer period for Viet Nam (7 years) and for Cambodia, Laos and Myanmar (13 years).

It is however unfortunately difficult to see concrete progress from Indonesia, 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, Indonesia has 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); 4) the Agreement of Comprehensive

⁶ Eurostat <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

⁷ <https://asean.org/wp-content/uploads/images/2015/December/afas-9/AFAS%209%20Protocol%20FINAL.pdf>

⁸ <https://asean.org/storage/2012/05/AFAS-10.pdf>

⁹ <https://asean.org/storage/2012/05/ATISA-signed-scanned.pdf>

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 on-going.); and 5) ASEAN–Australia–New Zealand. AANZFTA entered into force in January 2010 (this agreement is considered the highest quality of ASEAN's FTAs with its partners). Finally, the negotiations with ASEAN + 6 (China, Japan, South Korea, India, Australia and New Zealand) called “Regional Comprehensive Economic Partnership (RCEP)” were finally concluded in November 2020, but India finally didn’t join. The services chapter of RCEP is not considered as really advanced.

Second, Indonesia 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. Indonesia has bilateral FTAs with Australia, Chile, Japan, and Pakistan. We looked closer to two of these FTAs:

- Japan and Indonesia signed an FTA in August 2007, which came into force on 1 July 2008. The FTA¹⁰ 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 Indonesia (using a traditional GATS’s like positive list) does not show tremendous progress¹¹. 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.
- In 2019, Australia and Indonesia finalised negotiations on a comprehensive economic partnership agreement (IA-CEPA)¹². The text was formally signed by the two countries in March 2019 and came into force on 5 July 2020. This agreement covers not only trade in goods, but also trade in services, protection of intellectual property and new privileges for investors. Indonesia is seeking more foreign investment, especially in priority sectors such as energy and infrastructure, to meet its ambitious economic development plans. The FTA has increased access for Australian investors in Indonesia, permitting majority Australian ownership for businesses in certain sectors as Education, Tourism (up to 100%), Communications, Health, Aged Care, Energy and Mining services or also companies supplying architecture, engineering, urban planning, project management, surveying, and construction services in Indonesia. It is also interesting to note that Indonesia accepted for the first time to take commitments in the services sectors following the negative approach, listing the non-conforming measures. This agreement therefore includes some features that it will be important for the EU to obtain for European services providers.

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 Indonesia, and in particular with the treatment that Australian services suppliers when doing business in Indonesia.

¹⁰ <https://www.mofa.go.jp/region/asia-paci/indonesia/epa0708/index.html>

¹¹ See page 874 onwards. <https://www.mofa.go.jp/region/asia-paci/indonesia/epa0708/annex8.pdf>

¹² <https://www.dfat.gov.au/trade/agreements/in-force/iacepa/iacepa-text/Pages/default>

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-Indonesia CEPA 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 Indonesia. At WTO level, at the end of the Uruguay Round in 1995, Indonesia **commitments were very weak**. The most obvious problem is a horizontal obligation for joint venture in mode 3 with at 49% foreign equity cap. A 20% withholding tax on fees from services performed in Indonesia is also levied on foreign suppliers. Mode 4 is also very limited with only senior management and experts covered and only for 2 years. Business visitors can stay only 60 days instead of the world average of 90 days. Overall, the commitments exclude many sectors and generally only partially cover sectors that are committed. Commitments tend to be very restrictive. And this **remains today the only bidding elements towards the European Services companies**.

The Doha Development Agenda (DDA) GATS Offer of Indonesia was also very disappointing. Indonesia made no offer and no commitments in many services sectors, and where commitments were made, they were not impressive. **Indonesia's initial offer¹³ was very weak overall**. Apart from the limited commitment in three new areas (legal, health and energy services), nothing was proposed to address obvious gaps such as accounting & taxation, postal & courier, distribution services, etc, which are not committed at all. Mode 3 remains very restricted. In 2006, ESF called on Indonesia to make meaningful new commitments in its next DDA offer. But Indonesia finally did not table a revised offer in 2008, and then the DDA talks were stalled. ESF call the EU negotiators to significantly improve Indonesia services commitments in its FTA with Indonesia.

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 Indonesia, as described here above, and in particular with the treatment that Australian services suppliers are granted when doing business in Indonesia. 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 Trade in Services Agreement (ATISA) and in the ASEAN FTAs or in the Regional Comprehensive Economic Partnership (RCEP), even if arguably the level of services commitments in this later agreement is not high.

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 would seem appropriate to use this method as well for Indonesia. However, given that recently Indonesia has concluded a new comprehensive agreement with Australia, using the **negative list approach**, ESF will strongly recommend to using this method with the EU as well. In any event, depending on the decision of both

¹³ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/TN/S/OIDN.pdf&Open=True>

partners, whatever the chosen method, it should not prevent the negotiators at aiming at the most ambitious market access commitments by Indonesia 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-Indonesia FTA. It should of course cover temporary movement only and not permanent migration. It would be much appreciated if negotiators would 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 its GATS schedule, Indonesia took few commitments “only for directors, managers & technical experts/advisors” to enter the country as intra-corporate transfer (ICT) “with a maximum stay of two years, subject to one year extension” and “based on economic needs test”. In Its GATS DDA Offer, it only added that Business visitors are permitted for a period of 60 days only. This proposal is now enacted in the Japan-Indonesia deal.

Better opening should be negotiated for intra-company transferees, for the contractual service suppliers and for independent professionals in the FTA. Indonesia should not require a work permit for EU citizens who will be business visitors conducting business meetings in in Indonesia **up to 90 days** like for APEC Travel Card Holders. EU citizens cannot hold an APEC Travel card, but the EU grants 90 days permit for business visitors, and this should be reciprocated.

Here are some more specifics concerns:

- **Foreign companies face conditions on their ability to temporarily transfer staff in local business units from abroad.** Employment of foreigners is allowed only in positions Indonesians cannot fill and if regular and systematic training is provided, so that Indonesians can eventually replace expatriates. There are normally no difficulties obtaining permission to employ foreign managers/technicians if the government believes no Indonesians are available to fill roles, but firms must submit an annual report which states how many expatriates they employ and their plans for training Indonesian staff.
- **Indonesia also maintains legal nationality requirements on board directors and imposes residence restrictions on them.** The majority of the board of directors must be residents in the non-life sector, but not in life and reinsurance sectors. For all **insurance's** sub-sectors, at least one board director must be a national. Similarly, across the insurance sub-sectors a manager must be a national but does not have to be resident.
- The Indonesian Parliament occasionally passes rules which discriminate against foreign businesses, such as the recent bills on working visas and Bahasa language requirements for foreign workers. To date, the President has declined to pass these rules into law.

There are a number of other concrete hurdles regarding the temporary movement of natural persons, notably:

- There are no exemptions for a 1-3 week short job term job assignments, now it is same procedure as for a long term job permit which is a lengthy bureaucratic procedure.
- In the application for a residence and work permit every village that you intend to work in has to be listed. A permit should be valid for Indonesia as a whole to simplify the procedure and decrease the administrative burden.

- There are limitations on using foreign workers. These limitations however vary and there is a problem with transparency and clarity of rules.
- Regulations and actual practice do not align and also differ strongly from region to region within Indonesia, for instance regarding the formalities for work permits. This makes it very hard for companies to follow, given that changes are not communicated to stakeholders. Better implementation of regulations and laws as well as greater transparency and communication is absolutely key.

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-Indonesia FTA should remove, as far as possible, all kind of control of foreign ownership, like remaining equity caps, or limitation imposed by any Indonesia 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.

Careful consideration will be required about a potential FTA's impact on existing Bilateral Investment Treaties and whether the FTA considers proposing the EU's Investment Court System (ICS) mechanism, or whether – like the EU-Vietnam FTA - it leaves existing BITs between Indonesia and member states untouched, to be replaced by the FTA's ICS only when existing BITs lapse. Following the termination by Indonesia of its BIT with the Netherlands in 2014, the current expectation is that it will seek to terminate other BITs in due course. While the existing BIT contains a twenty-year sunset clause for investments made when the BIT was in force, it will be important to ensure that the FTA provides suitable level of protection and enforcement if it replaces existing BITs, and that there are suitable transitional arrangements if BITs lapse and are replaced by an FTA-based ICS mechanism. At the moment, there are 14 EU member states have a BIT with Indonesia (Belgium, Croatia, Czech-Republic, Denmark, Finland, France, Germany, Hungary, Italy, Netherlands, Poland, Slovakia, Spain, Sweden. There was as well an UK-Indonesia BIT.

5) Public procurement

The question of public procurement should benefit from particular attention in the FTA negotiations since Indonesia is not a member of the Government Procurement Agreement (GPA). We take note that Indonesia is an observer in the GPA since October 2012, 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 Indonesian 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.

It is important to note that usually in government procurements there are 35% local content requirements. The Indonesian government has recommended that local companies should use internal borrowing instead of for example ECA guaranteed loans. Companies and banks are confused whether the external borrowing is acceptable at all or whether Indonesian companies can apply for a special license for external borrowing (ECA-loans). There are also negative investment policies for selected industries, which lead to the situation that it is almost impossible for a foreign company to participate in certain major industries. EU Negotiators should look on how to change this situation.

In January 2016, the President of Indonesia has issued Presidential Regulation No. 3 of 2016 on Acceleration of the National Strategic Projects Implementation ("**Regulation**"), which serves to prioritize infrastructure projects that must be concluded immediately. the Regulation listed 225 infrastructure projects that were prioritized and had to be finished as soon as possible.

The Regulation stipulated provisions in regards to many issues, including licensing, non-licensing, land procurement, and domestic components. Specific to licensing and non-licensing, the One-Stop Integrated Service (*Pelayanan Terpadu Satu Pintu – PTSP*) must issue all licenses and non-licenses within five days after a complete application is received. In regards to domestic components, the Regulation was silent on the detailed figures and allocation of such components.

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. The text finalised on that matter in the EU-China Comprehensive Agreement on Investment should serve as a basis for these negotiations.

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 – Indonesia 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.

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. FDI limitations and other discriminatory restrictions e.g. related to citizenships at board level should be lifted. The Schedule of Commitments from Indonesia in telecom services is of low level in terms of market access. It is appreciated that Indonesia did commit to the Basic Telecommunication Reference Paper, where disciplines requirements for the regulatory authorities are set (political independence of the regulator, interconnectivity obligations, etc.). Disciplines in the FTA should ensure a full implementation of this Reference Paper that should be review to bring it to the level of modern digital economy.

Let us highlight some particular issues:

- **Over-the-top (OTT) content**

KOMINFO released a draft regulation on the provision of internet-based applications and/or content (OTT) at the end of April, 2016 (see https://www.kominfo.go.id/content/detail/7398/siaran-persnomor-35pihkominfo42016-tentang-uji-publik-rpm-penyediaan-layanan-aplikasi-danatau-kontenmelalui-internet/0/siaran_pers). The draft regulation requires foreign over-the-top (OTT) mobile service providers to register as permanent Indonesian business units and also includes requirements for OTT providers to partner with telecommunications providers. Currently, OTT is defined with a wide scope covering every item running over the Internet, and imposes requirements for local presence, local payment gateway, local language, and local IP address. In early July 2016, Minister Rudiantara told reporters from the Jakarta Post that Kominfo will be moving away from several provisions in the draft regulation. However we are still watching this closely. Kominfo has brought in MOF to the discussions around taxing OTT. We have not seen any movement on the draft.

- **e-Commerce and data localisation**

We take note that Indonesia decided in February to join the WTO Joint Statement Initiative for the negotiations of WTO Rules on E-Commerce. We welcome this move but would like to draw the attention on some concerns in that area in Indonesia.

MOT released a draft regulation on e-commerce in June 2016 (see <https://chambermaster.blob.core.windows.net/userfiles/UserFiles/chambers/9078/File/ICT/2016/peraturan-pemerintah-tentang-transaksi-perdagangan-melalui-transaksi-elektronik-id-2016066.pdf>). While the draft is an improvement upon previous versions looking at regulating

e-commerce, there are still concerns around minimum capitalization for foreign businesses, data on-shoring, the right to block content, and extensive data protection provisions. At the moment the draft is reviewed by the Ministry of Law and Human Rights for harmonization, who is expected to host inter-ministerial discussions on the draft. The target to finish harmonisation is September. Another concern for the EU Industry relates to the provisions on data privacy which should rightly be addressed in the data privacy regulations (see more in the data localisation paragraph below).

- **Data localisation**

Government Regulation No. 82 on the Operation of Electronic Systems and Electronic Transactions came into force on 15 October 2012, augmenting the previous Law No. 11 on Electronic Information and Transaction. It regulates: the operation of electronic system, electronic transaction, electronic signature, electronic certification, certification body and domain name. The regulation expanded the country's data protection regime by requiring "electronic systems operators for public service" to set up a data center and disaster recovery center in Indonesian territory for the purpose of law enforcement and data protection. The unclear scope of the regulation has been a source of concern since its inception, and in January 2014, KOMINFO increased concern by circulated a draft regulation with technical guidelines for data centers, which according to the Ministry's spokesperson "covers any institution that provides information technology-based services".

In August 2015, KOMINFO issued 3 draft ministerial regulations regarding protection of personal data in electronic systems, information security management systems, and electronic system software.

Global Industry submitted comments on the three drafts. Comments stressed changes to ensure the protection of the public's privacy in a manner that is efficient, flexible, and practical, while facilitating innovation. Available at this link: [Comments on the regulation concerning the protection of personal data.](#)

Later, Minister Rudiantara stated that Indonesia will remove the requirements to locate data servers but these requirements are still included in the OTT and e-commerce draft regulations. Also worth noting that there is also a draft regulation on IT risk management that includes data localisation for banks. The electronic transactions law may be reviewed by the Parliament this year, in which case Kominfo is expected to review GR82 next year.

Finally, the new draft bill for data privacy is expected to be adopted by the Parliament next year. In addition, KOMINFO said they are working on a draft ministerial regulation.

8) Domestic regulation

Most regulations are published only in Indonesia language, which creates difficulties for foreign traders to understand and comply with new regulations.

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 Indonesia 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, hopefully by upcoming WTO MC12. It is therefore even more important to set disciplines on domestic regulation in the FTA with Indonesia. 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, 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.

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 Indonesia that the FTA negotiations should aim at improving.

Overall, customs procedures and requirements for imports, exports and/or transit in Indonesia are lengthy and burdensome. The establishment of a coherent, simplified and more transparent procedure should be addressed in the negotiations. More specifically, as of today, Indonesian regulations do not allow for some of these international best practices which are commonplace around the world, including in Indonesia's neighbouring countries. Key factors causing the clearance delays are a shortage of customs manpower, long delay of physical inspection (red lane) in combination with high rates of physical inspections and the burdensome and duplicative hardcopy paperwork submission requirements for clearance and customs control purposes. With regard to Customs automation system which is known as Customs and Excise Information System and Automation (CEISA) which is hosted at the Ministry of Finance has experience frequent down time since May 2015. This creates unnecessary delay to the clearance of shipments. The cause of the down time was due to network error, application as well as electricity supply.

A way of improving clearance times is to reduce physical inspections - in certain Asian countries physical inspections are done on 40-60 per cent of imported goods. Customs should instead rely on risk management techniques and implement **pre-arrival clearance and post audits**. Customs should also apply enforcement systems that use risk analysis and risk management to identify goods for inspection, based upon submission of data in advance of physical arrival of goods at the border.

Customs clearance and release can be further expedited through early lodgement of data. In cases where goods are selected for physical inspection, the importer can also be advised in advance so that the presentation of the goods to be handed over to Customs for inspection can be arranged without delay. The adoption of pre-arrival clearance would help reduce delays at the entry points and expedite clearance and release time. This is also in line with international customs conventions like the WCO's Immediate Release Guidelines.

Despite some improvements under the current government, Indonesia's regulatory framework remains murky. Draft regulations continue to be issued with little or no public consultation. Some ministries make existing regulations available online (sometimes late announcement) but this is not consistently adopted across government.

The accessibility of customs to carry out clearance outside of office hours at all the major airports and bonded zones would greatly reduce transaction time and costs, and reduce delays resulting from potential bottlenecks as a result of lack of customs availability outside office hours.

The introduction of EDI clearance at Customs is well received and further contributes to enhancing the efficiency of trade. Whilst these have been introduced for different categories of clearance progressively at different points of entry, there are still burdensome and duplicating hardcopy paperwork submission requirements for clearance and customs control purposes. This introduces a parallel manual processing of paperwork. Any requirement to print hardcopy paperwork and the parallel hardcopy clearance requirements should be completely removed, in favour of automated customs clearance.

Domestic logistic services are challenged by limits in the availability of reliable transportation and information systems, and by the underdevelopment of supporting services. Meanwhile, the outer regions of the country suffer from high logistical cost, caused not only by trade imbalances stemming from the concentration of economic activity in Java, but by the high market concentration of a few domestic shipping lines, creating near-monopolistic character of the market.

A de minimis value exempts low-value imports from revenue collection. The implementation of a de minimis threshold can initially be seen as a saving to government, where the cost of collecting Customs duty and other taxes on each low value consignment exceeds the amount of revenue collected. While a de minimis threshold may reduce government revenue, it simultaneously reduces government regulatory compliance costs and benefiting business, in particular SMEs, and consumers by reducing import costs and delivery times. Indonesia currently has a de minimis value of USD 50, which was introduced in 1996. We positively note that this threshold shall be increased to USD 100 according to a new courier draft law. We highly support this important move as it will help facilitation for SME and MSMEs as well as the growth of eCommerce triggered shipment volumes. However, the new draft express regulation will have big implication to the express industry due to the following points:

1. Weight threshold is going to be replaced with value threshold with new grouping of consigned goods that could create confusion for Customs themselves and courier and postal companies.
2. Flat tariff of 7.5% for shipment within the range of >USD 100 – USD 1,500 will be applied – this could trigger a lot of enquiry from customers.
3. Business entity with shipment >USD 100 will use formal entry – majority of express customers are business entities and with the formal entry the clearance will take 3-5 days which is not an ideal situation for the express industry whose main business is express clearance.

The current regulation for express shipments:

Import duty calculation

	Up to USD 3	> USD 3 – 1,500	> USD 1,500
Clearance type	Informal	Informal	Formal
Import duty	0	7.5%	MFN rate
VAT	10%	10%	10%
Income tax	0%	0%	2.5%

Notes: PPH is 0% - except for 3 (three commodities, i.e. bags, shoes, textile products)

The implementation of regulation may be interpreted differently by Customs officers in the field, an example would be as shown in point A.6 related to FTA. In relation to this, some Customs officer could take the non-direct flight shipment while some others may not be. The requirement to submit power of attorney creates additional burden for the express industry as obtaining them may take some time from customers.

Furthermore, there are the following additional regulatory challenges:

1. The mandatory Tax ID regulation

The mandatory Tax ID or other alternative IDs, i.e. Indonesian Citizenship identification number (NIK), passport for foreigners or driver's license must be included in the inward manifest (consignee) and in the outward manifest (shipper) which is targeted to be implemented by 1 August 2021. The new regulation could be challenging, among others, of the following reason:

- a) For inbound particularly, with the short turnaround time at the country of export prior to uplifting the shipment by flight, there is a challenge for the Tax ID to be populated in the manifest for all Indonesian consignees
- b) With the new regulation, where the overseas logistics provider is unable to complete the full manifest with accurate or complete Tax IDs, the entire manifest will be rejected by Customs. Where the manifest is rejected, subsequent customs declaratory processes cannot be undertaken and causing longer lead time and increase logistics cost

2. The piloting of CEISA 4.0 (Customs and Excise Information System and Automation) for all ports in Indonesia by September 2021

Customs is currently piloting CEISA 4.0 starting in October 2020 with the target for completion in all ports by September 2021. CEISA 4.0 covers improvement of the previous modules for import of formal clearance, export clearance and FTZ clearance. The implementation was quite challenging as it is still unstable hence create clearance delays. This CEISA 4.0 is part of the National Logistic Ecosystem that currently being

developed by Customs to harmonise the traffic flow of goods and international trade documents from the arrival of goods until the goods arrive at the warehouse.

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

10) Other horizontal issues: Trade and Sustainable Development

The Commission published the [Final Report of the Sustainability Impact Assessment](#) (SIA) (dated August 2019) for the EU-Indonesia agreement. A [press release](#) accompanied the publication of the SIA. The Commission's services also published their [position on the SIA](#) report in June 2020. The Commission recognises that the SIA provides a detailed picture of the possible economic, social, human rights, and environmental impacts of an agreement between the EU and Indonesia. It provides useful insights on the main trends in Indonesia as to economic growth, social development, human rights governance and environmental management, and highlights the key opportunities and challenges that an agreement could bring in these respects. We take note that overall, the findings and recommendations of the SIA confirm the strong case for an agreement between the EU and Indonesia, which is expected to be beneficial across all the main indicators for both sides.

EU negotiators are now systematically developing a chapter on Trade and Sustainable Development in FTAs, which will also be included in the EU-Indonesia FTA given the political importance of this issue to allow it to be ratified by the EU institutions.

We acknowledge that Vietnam, or more recently with MECOSUR countries have taken up serious commitments on trade and sustainable development in their FTAs with the EU and encourage the EU to negotiate similar level of commitments with Indonesia.

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 Indonesia. 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 Indonesia 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 Indonesia. 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 deprecation.

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, Indonesia took no [GATS commitments](#) in any of the modes many services sectors, notably:

- a. Legal services, Accounting, auditing and bookkeeping; Taxation services,
- b. the various medical and related services;
- c. Real estate services and a very long list of other business services;
- d. Postal/courier and logistics sector;
- e. Audio-visual services;
- f. Distribution services;
- g. Education services;
- h. Environmental services;
- i. Health related & Social services;
- j. Many transport services

It is important to remind the fact that this GATS Schedule is still the current level of commitments by Indonesia towards the EU. This must be remedy in the FTA.

The following paragraphs sometimes refer to the [Indonesia Initial offer tabled in the DDA GATS negotiations in 2005](#), comparing it with the still currently binding commitments of the Uruguay round [Indonesia's schedule of commitments](#). Furthermore, we urge the EU negotiators to ensure that the basis of the market access negotiations with Indonesia should be the highest commitments taken to date by Indonesia. We can mention in particular the Indonesia Schedule of Commitments with Japan although that also remain a rather poor and low level ([see from page 874 to 916](#)). The one with Australia goes into more depth (see Australia-Indonesia FTA [here](#)). Another way of looking at the best level of reference to be obtained from Indonesia is also to try to achieve the same level that the one reached by Vietnam in the its FTA with the EU (see the [Vietnam Schedule of commitments](#), 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, Indonesia took limited commitments only in architectural and urban planning services, in engineering and integrated engineering services, and always asking “to form a joint operation by establishing a representative office”. It is welcomed that Indonesia took some commitments with Japan for legal services. These commitments have been confirmed with Australia and somewhere improved. But much more should be liberalised, including in accounting, auditing and bookkeeping services.

Business services: Indonesia 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, real estate services, etc.). Much more Business services must be committed. Equity cap of 49% has been lifted on **Computer related services** with Japan. EU

should obtain the same, and more, including opening up ownership of companies providing **management consulting services**.

2) Postal services

In **postal and express courier services**, Indonesia has failed to take any GATS commitments or any offer in the DDA. Indonesia did not commit this sector in its FTAs, including with Japan. We understand that progress were made with Australia, where “foreign service suppliers are not permitted to establish a commercial presence in Indonesia to supply postal or courier services, except through a joint venture with only one Indonesian postal service provider with foreign equity not exceeding 49 per cent. The Indonesian joint venture partner must be wholly Indonesian-owned”. EU businesses should be granted at least the same access.

One of the main barriers European companies in transport, logistic and delivery services face for cross-border services trade is Indonesia’s cargo security system. All cargo, regardless of risk and shipper status, must now be x-rayed by designated Regulated Agents prior to export and the civil aviation authority has prescribed a very limited number of Regulated Agents through which all cargo has to be screened. Although the number of Regulated Agents which have been approved has now been expanded to reach around fifteen entities (from originally three), the number is still too low to handle all cargos. The implementation of the regulation with three regulated agents being appointed initially led to severe delays, congestion and protests at the airport.

In 2012, the Ombudsman of the Republic of Indonesia conducted an investigation on Transportation Ministerial Regulation No. 152 Year 2012 regarding air transportation-based security. Findings of the investigation include the regulation causing high national logistic cost, increase of flight safety risk from terrorist threats and dangerous smuggled goods, cargo screening outside of line 1 airport area which is not sterile for flight security, and unclear responsibilities between Regulated Agents and airlines regarding flight security.

The current RA regime increases logistics costs as screening fees increase ten-fold, and impacts import and export. The Regulated Agent is not responsible for the goods they screen, under the current Regulated Agent the air cargo safety must be borne by the airlines. Screening is performed without appropriate equipment and adequately trained staff to detect and handle high risk cargo. There is an issue about the standard of x-ray machines that are being used. Each Regulated Agent can have different machines with different standards.

We suggest the EU, in its negotiation process to use the opportunity to display EU standards by showcasing line 1 being used by foreign companies and allowing airport authorities to learn from line 1.

Furthermore, there are a number of foreign ownership caps that affect the logistics, distribution and courier sectors in Indonesia, as follows:

- Per the 2016 Negative Investment List, warehousing is limited to 67% foreign ownership
- Per the 2016 Negative Investment List, distribution that is not affiliated with production is limited to 67% foreign ownership
- The Postal Law was passed in September 2009 with very limited transparency.
- The Law sets to privatise the Indonesian postal market within five years but contains a number of unclear and very restrictive provisions. In particular:

- a) The wide scope of postal services goes beyond international best practices and what normally constitutes postal services. It includes among other things electronic transactions and logistics services, creating an overlap with freight forwarding services regulated by the Ministry of Transportation.
- b) It restricts operation of foreign postal operators to international gateways in provincial capitals. Although a clarification letter issued in 2011 by the regulator the Ministry of Communications and IT (KOMINFO) expands the operational area somewhat, it does not cover the domestic leg of international shipments.

Indonesia should be urged to reinstate previous ownership thresholds of 95 per cent for all logistics services. In addition, additional restrictions on foreign logistics providers should not be imposed, since one of the Government's main priorities is to improve connectivity and lower the costs of doing business in the country.

3) Telecommunication services

In its revised GATS Schedule of April 1997, the Indonesian commitments in telecommunication services are rather limited and, where allowed, foreign equity participation is limited to 35 per cent. In its agreement with Japan, this equity cap is up to 40% only. Under its CEPA with Australia however, Indonesia has committed to allow majority-Australian owned suppliers of telecommunications services. Both countries have committed to transparent and pro-competitive telecommunications regulation, including:

- Providing equal treatment for foreign-owned telecommunications suppliers;
- Ensuring incumbent telecommunications companies provide other suppliers with access to services and key infrastructure on reasonable terms and conditions;
- Working cooperatively to promote reasonable international mobile roaming rates; and
- Applying transparent rules for installing and repairing vital submarine cables, including Australian-owned cables that pass through Indonesian waters and help connect both countries to the world.

These commitments to transparent and pro-competitive regulation should also be taken with the European Union as they will improve opportunities for European suppliers and contribute to increased access to quality telecommunications services in Indonesia. It must be emphasised that it is appreciated that Indonesia from the start undertook additional commitments as per the Reference Paper. The EU will have to properly monitor the full implementation of these commitments contained in that Reference Paper.

IT and Telecommunications Equipment

In relation with the Telecommunication services, it is important to look at the IT and Telecommunication Equipment that are necessary for providing telecommunication and digital services. Basic localisation policy was introduced by regulation 69 of the Minister of Industry. It lists a lot of equipment that would be subject of minimal local Value Added including IP switches, routers etc. but until today no one applied it in process of obtaining type approval before minister of telecommunication release another regulation as the guidance regarding amount of local VA to be applied in specific equipment.

With the Ministry of Communications and Information (KOMINFO) regulation (MCIT 27/2015) signed in July 2015, Indonesia introduced new local content requirement for LTE (4G) telecom equipment, requiring 30% local content for base stations and 20% for subscriber stations, which will be increased to 40% for base stations and 30% for subscriber stations within two years.

After several iterations, in June 2016 the Ministry of Trade (MOT) signed the third amendment to MOT Regulation 82/2012, regarding local content provisions for LTE devices. MOT 41/2016 went into effect on July 1, 2016. The final regulation is largely the same as the previous draft we have seen, except for the removal of some labelling requirements.

In 2016, the Ministry of Trade has also issued a new import regulation (Minister of Trade Reg No 41/2016 – MOT 41) for 4G devices that require importers to have a manufacturing import license, instead the general import license, to import 4G devices. Manufacturing import license is granted only for companies who have established manufacturing facilities in Indonesia, where the import license itself is designated to import raw and supporting material for the manufacturing facilities. Therefore, this is forcing companies to have manufacturing facilities in order to conduct business in Indonesia.

After that, the Ministry of Industry (MOI) released the final version of Regulation 65/2016 with the methodology for calculating local content. There is an inherent contradiction for the Government to want to improve the country's ICT connectivity, while preventing operators from importing the 4G technology that they need to build rapidly the necessary infrastructure.

The local content requirements imply that very few companies are able to comply with these requirements as their supply chains include importation of components not available in Indonesia. At this stage, EU companies are at an impasse as the options they tried to meet the requirements didn't succeed, they cannot import any item with 4G into Indonesia. There is a new option discussed about having software counted as local content, but the regulation hasn't been released yet. We hope that the CEPA negotiations will allow an improvement of this situation.

4) Construction services

Indonesia's Uruguay Round commitments were a positive first move. In the initial offer, Indonesia made a further step forward, allowing foreign equity up to 55% in companies established in joint ventures and extending coverage to a number of sub-sectors in installation. This move was welcome, as it went beyond the horizontal 49% equity cap and allowed a majority equity ownership. However, coverage remains limited with key sub-sectors, such as one & two level dwellings, much of installation work and completion and finishing work, excluded.

It is welcome that Indonesia took additional commitments in mode 3 with Japan for that sector, but the schedule goes into many details of the various construction services and makes rather complicated to understand what is possible or not for foreign construction businesses. Simplification and clarification will be needed in the FTA with the EU.

5) Distribution services

In **distribution services**, ESF was extremely disappointed that Indonesia has failed to take commitments in the Uruguay Round, or an offer in this key sector in the DDA. The commitments by Indonesia in FTAs in that sector remain very restrictive. ESF encourages the negotiators to negotiate further commitments in all distribution services (wholesale, retail, franchising, etc) in all modes, and in particular in mode 1 across the whole distribution services to allow development of e-commerce.

Furthermore, the enactment of Indonesia National Standard (SNI) has widely affected Indonesia's distribution sector especially for imported products. This is much due to the fact that Indonesian standards are seldom fully aligned with international standards. Businesses in the distribution sector have been prioritizing to comply with Indonesian standards, however they report challenges in implementing procedures to comply with the SNI and the time they require to get import clearance. The longer the clearance takes place, the bigger the inventory cost is. Clearance which requires inspection per shipment becomes a highly significant factor to inventory cost and hence to the competitiveness of distribution sector. So far, the cost has to be directly translated to the price received by consumers. In addition, the lack of alignment with international standards both impact Indonesia's viability as a regional manufacturing hub and the competitiveness of Indonesia's exports.

6) Education services

Indonesia's offer is relatively substantial in this sector of **education services**, with full commitments of mode 1 and 2, as well as mode 3 commitments - according to horizontal (i.e. 49% cap) and General conditions - in vocational and technical education committed at secondary and higher levels along with language education.

In Education services, Indonesia guarantees in the IA-CEPA that Australian suppliers of certain technical and vocational education and training (known in Indonesia as work training) can provide services through majority Australian-owned businesses in Indonesia. The previous limit was 49.9%. ESF urges EU negotiators to obtain similar commitments than those granted to Australia.

7) Environmental services

In **environmental services**, Indonesia has failed to take any GATS commitments or any offer in the DDA. No commitment in that sector was taken either with Japan or Australia. ESF calls the negotiators to ensure that this will be different in the CEPA.

8) Financial services

The Indonesia's GATS schedule in financial services (as per Document GATS/SC/43/Suppl.3 of 26 February 1998) is somewhere complicated to understand. One of the interesting features is the clause stated in the general condition on Non-banking financial services subsector and on Banking subsector, which says: *"All Market Access and National Treatment limitation specified in the Banking Subsector/ Non-Banking Financial Services Subsector will be eliminated by the year 2020 subject to similar commitment by other members"*. Interestingly, this same sentence is also repeated in the Japan-Indonesia FTA of 2007. This seems also to be the case in the Australia-Indonesia FTA (concluded in 2019 and entered into force in Jul 2020) but the sentence *"For greater certainty, the elimination of Market Access and National Treatment limitations for Modes 1, 2 and 3 of Financial Services under this Agreement by the year 2020 shall take place only if Indonesia also eliminates them under AANZFTA"* is in fact introducing uncertainty about whether these limitations will effectively be eliminated. ESF calls upon the negotiators to provide clarity on the meaning of such commitment.

Indonesia's DDA offer has done very little to make progress on a situation of limited market access in financial services. The offer allowed for 51% ownership of local banks, which is meaningful, and increases the number of bank branches permitted from 1 to 2, in specific conditions. The offer failed, however, to address other major problems such as the extremely

confusing classification used in the schedule; the exclusion of a number of sub-sectors, including pension funds, trust services, much of advisory services and trading in derivatives; the general condition that the conditions for establishment through joint venture are only bound at prevailing legislation; and the geographical restrictions.

It makes no changes under insurance where mode 2 remains unbound except for very limited circumstances and the strict horizontal measures apply in mode 3 – although foreigners can buy 100% of local companies. For securities and asset management – which are included with insurance in the schedule – local incorporation is still required. For banking, establishment remains limited as new licences are unbound.

ESF regrets that Indonesia did not make real progress in the liberalisation of that important sector, including in recent years and would like to see more in the EU-Indonesia CEPA. We take note that the agreement with Australia includes provisions that promote transparency of application procedures necessary to supply financial services and it improves access to self-regulatory organisations, where access is necessary to supply a financial service in Indonesia. The agreement also considers allowing financial institutions to supply new financial services already supplied in one territory but not in the other. This should also be integrated in the agreement with the EU.

Let us highlight some particular barriers that should be discussed in the talks:

Insurance and reinsurance:

1. **Indonesia's Mode 3 GATS schedule binds the government not to lower foreign ownership caps in the insurance sector below 49%, while the current legislation provides for 80% foreign ownership limit in locally incorporated joint-ventures.** It is key that the EU seeks at the very least to bind the current 80% cap in its future FTA with Indonesia. However, the first priority should be to secure the elimination of joint-venture requirements and to raise foreign equity limits to 100%. In addition, there should be an undertaking that where a company has more than 80% shareholding with prior OJK permission, there will be no retrospective demand for the company to give up part of its shareholding. This undertaking could be achieved through a commitment to grandfathering of existing shareholding structures.
2. For cross-border provision (mode 1) of insurance, as a general rule, a local legal entity must be established or the insurer in question must buy shares of an established insurer. However, cross-border provision of insurance by licensed foreign insurers is conditioned on domestic availability tests – although direct purchase of personal insurance from non-admitted insurers via the internet is currently tolerated by the OJK.
3. **There are also significant issues for reinsurers in the country – with the national reinsurer having to have the right of first refusal for business.** Since January 2015, insurers operating in Indonesia must place 25-100% of their risk coverage with domestic reinsurers. Furthermore, in June 2020, the Indonesia financial regulator issued a new regulation to gradually remove market access barriers for foreign reinsurers by the end of 2022, but on condition that an agreement between Indonesia and the market of the reinsurer's domicile is in place. The financial regulator is currently in the process of identifying applicable agreements and this could create an unlevel playing field between foreign

reinsurers. As agreements are already in place for the US, Australia and Japan, this condition would be likely to disadvantage European reinsurers at the expense of healthy market competition in Indonesia.

4. **Only locally incorporated joint ventures may apply for an insurance operating licence.** To obtain an operating licence foreign insurers are also required to maintain paid-up capital reserves five times higher than domestic insurers by the Indonesian Financial Services Authority (OJK).
5. **As per the new Insurance Law introduced in September 2014, foreign equity caps stand at 80%. However, the Otoritas Jasa Keuangan (OJK) has approved 100% caps on a case-by-case basis.** Many joint venture insurance companies operating in Indonesia are currently fully controlled by foreign investors through utilising a dual-layer PMA structure to own shares in excess of the foreign direct investment limit of 80%. Foreign partners have been allowed within the current regulations to inject capital into a joint venture in excess of 80% so long as (i) the domestic partner does not reduce its capital; and (ii) the regulator approves the capital injection. Where approval has been given, this has often resulted from instances where Indonesian insurance companies have found themselves inadequately capitalised and the domestic partner has not been able to fund a recapitalisation. Having provided this approval in the first place, the statement by the OJK on 3 May 2016 was concerning, calling upon joint-venture insurers with foreign ownership above the current 80% cap to divest their shares via an initial public offering. OJK Commissioner for the Non-Banking Financial Industry Firdaus Djaelani suggested that alternatively, such foreign owned insurers could opt to divest from foreign owned shares above the current limit by seeking local strategic investors. The suggestion was dismissed at the time by the Ministry of Finance – responsible for setting equity caps - which stressed that the regulation setting out the foreign participation limit for insurance was still under development.
6. On 17 April 2018, the Indonesian government issued Regulation GR14/2018 on Foreign Ownership of Insurance Companies. **This confirmed the 80% cap on foreign ownership of (re)insurance companies.** Entities that had already exceeded the 80% foreign ownership cap at the time the Regulation came into force are not required to comply with it but are prohibited from further increasing the percentage of foreign ownership.

In July 2019, the Ministry of Finance proposed that there would be no restriction on foreign ownership of insurance companies that are granted “grandfathering” benefits or are excluded from the 2018 Regulation (capping foreign ownership in local insurance companies at 80%). It does, however, appear to keep the cap at 80% for new market entrants, thereby maintaining market access barriers.

7. **Lifting the obligation to work in joint venture with Indonesian nationals and the 80% cap on foreign ownership in the insurance sector should be a EU priority in the negotiations.** Although no details have yet been made public, the authorities maintain that these policy proposals are intended to level the competitive level playing field in ASEAN, arguing that Indonesian financial institutions are currently put at a competitive disadvantage in ASEAN by Indonesia’s more liberal market access regime. However, there is a strong counterargument given six out of ten ASEAN member states allow 100% foreign ownership of life insurance companies. Of the remainder, only Indonesia, Malaysia and Thailand maintain an equity cap (while Myanmar is considering the details of its regime). Further

moves towards an inward-looking policy could result in the gradual deterioration of market access conditions in the near future.

9) Tourism & Travel services

In **Tourism & Travel agency**, certain sub-sectors and modes are excluded, which is surprising from a country that is attracting a lot of tourism. Tourism represents 53.5% of Indonesia exports to the European Union in 2019. Some parts of the territory are excluded from the 100% of capital share that can be owned by foreign investors of 3, 4 and 5 star hotels in other part of the country. Some progress were made with Japan where new commitments were taken, but Beverage Serving Services without Entertainment, where permitted are still restricted 49.9% equity cap. And the commitments for “International Hotel Operators”, which states that they “can be established through joint venture enterprise, as indicated in the Horizontal Section” seems contrary to previous GATS commitments. Clarification is needed.

To expand Indonesia's international tourism sector, and respond to the Indonesian President's 'Ten new Balis' initiative, the recently signed CEPA with Australia provides certainty that wholly Australian-owned 3-5 star hotels and resorts can be established anywhere in Indonesia and majority Australian-owned businesses can supply the following services in Indonesia:

- Other accommodation, including 1-2 star hotels and motels
- Restaurants, bars and cafes
- Tour operators
- Marina facilities
- Tourism consultancy services (including on a digital cross-border basis)

ESF calls the negotiators to ensure that this will be also possible for European operators.

10) Transport services

Indonesia took very weak commitments in Transport services during the Uruguay Round. And its offer during the DDA GATS talks was also very weak. No offer was made on any sector other than maritime. In maritime the mode 1 requirement to use an Indonesian company as a “general agent” is of particular concern to ESF as is the mode 3 limitation to owner’s representatives. Very limited progress made with Japan, where the commercial presence for passenger, freight transportation and for maritime cargo handling services “must be established only through joint venture enterprise, with foreign equity share allowable up to maximum 49%”.

In this sector, Indonesia’s commitments should be no less ambitious than in its other agreements (incl. ASEAN agreements with China, New Zealand and Australia, and FTA with Japan and Australia) in order to reach a level playing field with market competitors.

The current regulation on FTA (PMK 205/2015) allows for goods in transit provided there is non-manipulation however most of the time the Customs only allow FTA facility to be provided to goods with direct flight arrangements. This limits the ability of the company who trade with Indonesia using FTA scheme. At the moment, the FTA regulation is being revised and it would be good to see this part revised to allow for non-direct flight shipments to enjoy FTA scheme.

In its agreement with Australia, Indonesia has guaranteed that majority Australian-owned business can operate railway and road transport infrastructure including highways, bridges and tunnels in Indonesia. ESF call to obtain these possibilities as well for European businesses.

Indonesia has also undertaken not to introduce any new discriminatory restrictions on Australian suppliers of international maritime transport services, including guaranteeing existing port access for Australian cruise ships. EU operators must get the same rights. And beyond. We encourage the EU negotiators to ensure that restriction of foreign equity ownership to 49% in maritime transport services would be removed, or at least the level increased.

11) Other services not included elsewhere

ESF also encourages the EU negotiators to seek commitments from Indonesia on energy related services. ESF takes note of the Indonesian offer in the DDA negotiations on that matter and welcomes this initiative but hopes the offer can be improved. Modes 1 & 2 remain largely unbound mode 3 establishment is limited to a joint operation through a representative office.

Like for the agreement with Australia, the CEPA with the EU should provide certainty by locking in current settings that allow majority EU-owned companies to invest in the following energy services:

- Drilling and survey services for geothermal power projects
- Operation of power plants, including geothermal power plants
- Electrical power construction, installation and operations.

List of members supporting the above position

- 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
- Conseil des barreaux de la Communauté Européenne – CCBE
- 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
- European Satellite Operators Association – ESOA
- European Public Telecom Network – ETNO
- 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
- Oracle Europe, Middle East & Africa
- Orange
- PostEurop
- Prudential Plc.
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- TechUK
- Telenor Group
- TheCityUK
- UPS
- Vodafone
- Zurich Insurance