

Brussels, October 2022

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



EXECUTIVE SUMMARY

- The European Services Forum strongly supports the negotiations towards an ambitious EU-India Trade Agreement. This paper is a revision of the [ESF Position adopted in 2010](#).
- For India, trade in services represent 42.2% of its total exports (BOP), while trade in goods represent 57.6%. India export of services is therefore performing very well. However, on the other way round, it is difficult for EU services businesses to export and invest in India. The FTA will have to remedy this lack of reciprocity.
- In terms of services, trade between the EU and India has increased in the last decade by 100% (from 2011 to 2021 – EU27) but amounting only to a total of €36.5 billion of transactions in 2021. India is however only the EU's 10th largest trading partner in services, with a 1.6 % share of the EU's trade in services. And this share has not increased since 2009. The EU, which is the largest exporter of services in the world, has a small deficit with India in 2021, although up to - €4.2 billion in 2020 due to the pandemic. The difficulties to access the Indian services market prevent European businesses to thrive in a booming economy.
- The EU is the first foreign investor in India, with €87.3 billion stocks in 2020. However, EU27 Services outward FDI to India reached **only 28%** of total EU Outward FDI, and this figure is stagnating for the last 5 years. This is clearly a figure that shows that access to India services market is severely restricted to EU services investors.
- ESF takes note that India has signed a phase-one FTA with Australia, and is currently negotiating a FTA with the UK. 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 India. ESF calls upon the EU to monitor these talks and aim at even more ambitious target in terms of services market access and of timing.
- At the end of the Uruguay Round, India 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 strongly recommends using the **negative list approach** in the market access negotiations with India, as it provides better information to exporters and investors.
- 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 with India 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. It is important in that regard to remember that +60% of all India exports of services to the EU are digital related services (IT & Computer Services, Management consulting in IT management, etc)!
- Our companies need to be able to send to India their personnel to their subsidiaries as well as to their clients for temporary periods on a specific contract basis. We encourage the EU negotiators to ensure that India will improve its Mode 4 Commitments.
- On Trade and Sustainable Development, ESF encourages the EU to negotiate similar level of commitments with India than the ones negotiated with the most recent EU agreements.
- India 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).

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European Services Industries Priorities for an ambitious EU-INDIA Free Trade Agreement

The European Services Forum (www.esf.be) represents a broad range of service sector interests, all of whom consider a Free Trade Agreement between the EU and India to be of paramount importance, but such an Agreement must deliver meaningful liberalisation from existing restrictions across all sectors whose interests and concerns are detailed in this document.

As India is to negotiate a series of bilateral trade agreements with Australia, Canada, Israel, the United Kingdom, as well as with the European Union, ESF expect at least a comparable opening for the EU than for other Indian trading partners.

I. INTRODUCTION: INDIA AS A TRADING PARTNER

A. INDIA ECONOMY

India was developing into an open-market economy, yet many traces of its past policies remain in place, and some protectionist behaviours are coming back in the last decade. Economic liberalisation, including reduced controls on foreign trade and investment, began in the early 1990s and has served to accelerate the country's growth, which has averaged more than 7% per year since 1997. The population stands at 1.389 billion in 2022 (+186 million in 13 years), and in 20120 India had a GDP of \$8.4 trillion, leaving a GDP per capita of €6.100 (a significant increase in 10 years). India's diverse economy encompasses traditional village farming, modern agriculture, handicrafts, a wide range of modern industries, and a multitude of services. Slightly less than half of the work force is in agriculture (47%), but services account for 61.5% of India's GDP (it was 53.7% in 2009), compared to only 15.5% for agriculture. But Services sectors are employing less than one-third of its labour force (31%). India has capitalized on its large educated English-speaking population to become a major exporter of information technology services, business outsourcing services, and software workers.

B. INDIA AND SERVICES LIBERALISATION

1) OECD STRI FOR INDIA

The 2021 OECD STRI of India is relatively high (0.4) compared to other countries in the STRI sample, and is one of the last countries out of the 34 (see OECD STRI¹ for India [here](#)).

The 2021 STRI reflects restrictions that apply on key strategic services sectors such as rail freight transport, legal services and accounting. These sectors are either reserved for public monopolies or they are completely closed for foreign direct investment and foreign services providers. Limitations on foreign ownership also exist in other relevant sectors such as distribution, commercial banking and insurance. These limitations are governed by the “Consolidated FDI Policy”, updated

¹ Launched in 2014, and updated annually, the OECD Services Trade Restrictiveness Index (STRI) is a unique, evidence-based tool that provides information on regulations affecting trade in services in 22 sectors across all OECD member countries and Brazil, the People's Republic of China, India, Indonesia, Kazakhstan, Malaysia, Peru, the Russian Federation, Singapore, South Africa, Thailand, and Vietnam. These countries and sectors represent over 80% of global trade in services.

regularly by the government. India applies labour market tests for natural persons seeking to provide services in the country on a temporary basis as intra-corporate transferees, contractual services suppliers or independent services suppliers. These categories may stay in the country for up to 24 months on their first entry permit. However, multiple entry business visas are awarded for up to five years with each stay limited to six months. At least one of the board members and the manager in corporations must be residents of India. Finally, there are preferences for local suppliers in public procurement.

India has been progressively introducing reforms over the past years, contributing to a slight liberalisation of services trade in some sectors before 2016 but unfortunately implementing additional restrictions since then. Engineering services, computer services, sound recording, and road freight transport are the sectors with less barriers. Insurance, accounting services, architecture services and rail freight transport are the sectors with the highest core relative to the average STRI across all countries.

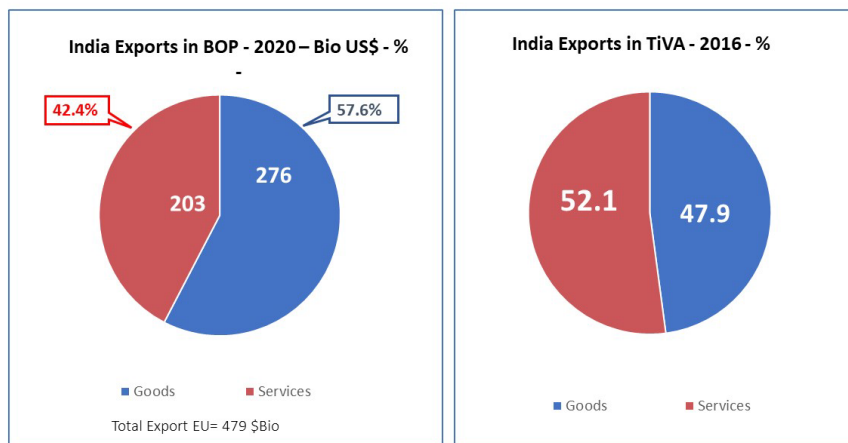
2) WORLD BANK EASE OF DOING BUSINESS INDEX

When we look at the [Ease of Doing Business ranking by the World Bank, India](#) has a medium rank (63) rather low score (71). And when we look at the topics of interests to services exporters and investors, the ranking is even lower (e.g. starting a business = 136; enforcing contracts = 163).

3) INDIA, TRADE IN GOODS AND SERVICES AND THE VALUE ADDED

To better understand the level of development of trade in India, another element that is interesting to look at is the composition of trade not only in terms of balance of payments, but also in terms of value added. The OECD developed the Trade in Value Added (TiVA) database to this effect. To compare with the EU, in 2020, the EU total trade is composed of 30.8% of trade in services and 69.2% of trade in goods, when counted in terms of balance of payment (BOP). For India, trade in services represent 42.2% of its total exports (BOP), while trade in goods represent 57.6%. India export of services is therefore performing very well. When looking at the same figures, but in terms of value added this time, one can see that in 2016 the share of trade in services represent 58.9% of total EU trade, while for India, this figure is also very high at 52.1%. This demonstrates that the development of services in India is performing well compared to many developing and developed countries.

IMPORTANCE OF TRADE IN SERVICES in India
Comparison between BoP & TiVA



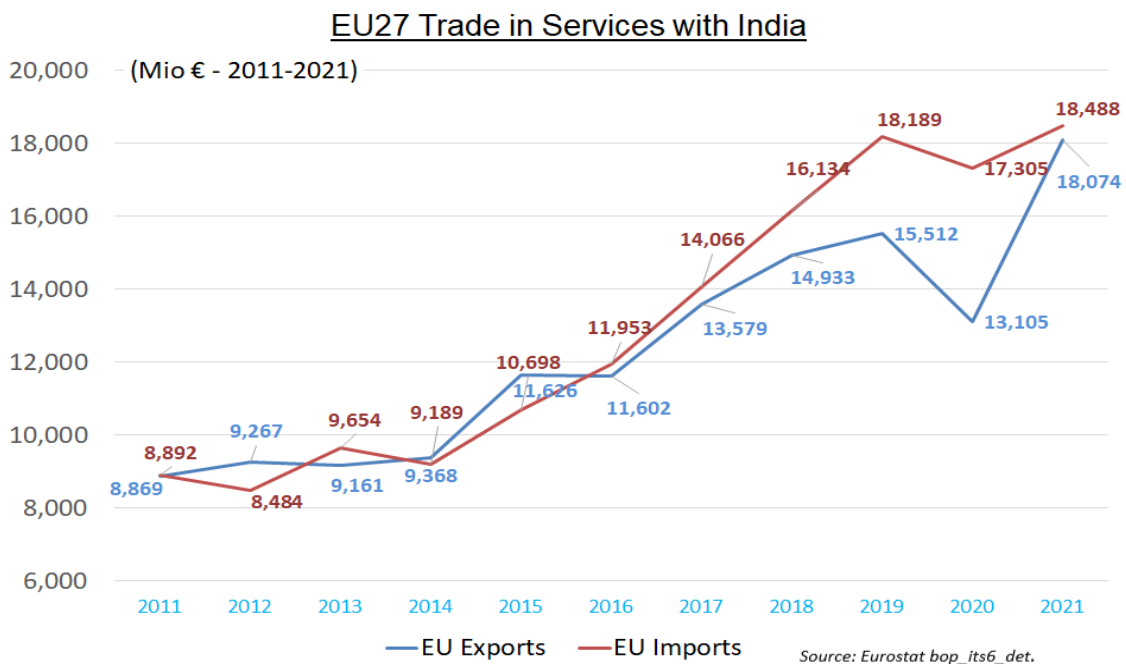
The services sectors in India are well developed and sectors like IT consulting services have benefitted of the openness of foreign markets to export abroad, while the Indian market remain closed to many

foreign investors. It is because the services sectors in India are well developed that it will be important to open these markets for EU companies in the FTA negotiations.

C. EU - INDIA TRADE AND INVESTMENT IN SERVICES

In terms of services, trade between the EU and India has increased in the last decade by 100% (from 2011 to 2021 – EU27) but amounting only to a total of €36.5 billion of transactions in 2021². India is however the EU's 10th largest trading partner in services, with a 1.6 % share of the EU's trade in services. And this share has not increased since 2009. The EU, which is the largest exporter of services in the world, has a small deficit with India in 2021, although up to - €4.2 billion in 2020 due to the pandemic. The difficulties to access the Indian services market prevent European businesses to thrive in a booming economy.

India is nevertheless the 5th largest exporting country in trade in services in the world, with US\$ 203 billion in 2020, i.e. EU-India trade in services represent more than 18% of India trade in services. Even if the trend shows considerable increase of the bilateral trade in services between EU and India in the last years (+67% EU exports and +99% EU Imports since 2011), there is clearly significant potential to increased trade flows from a Free Trade Agreement (see attached the annex the importance of trade in services between the EU and India. .



In terms of foreign direct investment, the EU's share in foreign investment inflows to India more than doubled from 8% to 18% in the last decade, making the EU the first foreign investor in India, with €87.3 billion stocks in 2020, which is significant but way below EU foreign investment stocks in China (€201.2 billion) or Brazil (€263.4 billion). As a reminder, in average more than 65% of all EU outward FDI comes from services sectors. However, according to Eurostat³, for India, EU27 Services outward FDI reached **only 28%**, and this figure is stagnating for the last 5 years. This is clearly a figure that shows that access to India services market is severely restricted to EU services investors.

² EU Total international trade in services (Extra EU27 - 2019) = €2094 billion (€1072 billion exports and €1022 billion imports), which makes EU-India services trade only 1,6 % of total EU trade in services – (2020 – EU27: €1787 Bio - -17% due to Covid Pandemic) - Source: Eurostat Bop_its6_det. See also statistical tables on ESF website here.

³ https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=bop_fdi6_pos&lang=en

D. EU AND INDIA FTA TALKS

In the framework of the WTO DDA GATS negotiations that were on-going until 2008, India has made a real effort and presented a Revised Offer in 2005, showing clearly that India had offensive interests in trade in services, and wanted to use its GATS offer as to attract foreign direct investment, in particular in tabling mode 1 and mode 3 commitments in many new sectors, including IT and BPO related services. The EU-India FTA negotiations that recently resumed should embrace back all these aspects and ensure even more advanced preferential commitments.

After a period of hesitation and mutual assessment of potential benefit of such an agreement in 2006 (as part of the Strategic Partnership between the two sides signed in 2004), the negotiations, which started between the EU and India in January 2007, entered into real negotiating phase in 2010. But soon the talks entered a period of lack of mutual understanding, and formal talks for the FTA were stuck over stark differences in trade in goods. After 16 rounds of talks between 2007 and 2013, the parties decided to suspend the negotiations in 2013. It is only eight years later, on 8th May 2021, that the [EU and the Indians leaders agreed to resume the negotiations](#) for “a balanced, ambitious, comprehensive and mutually beneficial” trade agreement, and to launch separate negotiations on an investment protection agreement and on geographical indications. They also agreed to link the trade negotiations to finding “solutions to long-standing market access issues” in the WTO.

The European Services Forum already adopted a [detailed position paper on the EU-India FTA negotiations in 2010](#). This current Position Paper is an update of such document. Unfortunately, and despite our lack of information on sector specific regulatory regimes, we can only note that much of the then-described trade barriers to the services sectors are still in place, and in many instances, have even worsen.

We would like to emphasise that the FTA negotiations on services with India, in addition of aiming at improving the traditional pre-establishment commitments, should also put the stress on post-establishment measures, as the problem of most EU companies remains to be granted a fair and equitable treatment compared to Indian companies (tax case, licenses case, Universal service case) and to get access to the necessary information to export and to invest in India. We take note that India is not part of the recently agreed disciplines on Services Domestic Regulation adopted by 65 countries in Geneva in December 2021. ESF therefore call upon the EU negotiators to ensure that the agreement will include domestic regulation’s obligations that will provide transparent licensing and authorisation rules for services providers.

The talks should also try to address the issue of lack of clarity and ambiguity in Foreign Direct Investments rules (i.e. restrictions applied to FDI that do not apply equivalently to Indian companies). But we understand that these rules will possibly be set in a different agreement. ESF reserves the right to provide specific comments, if felt appropriate, on these negotiations as well.

Finally, as with other trading partners, an ambitious result on industrial goods with full coverage tariff liberalisation would be conducive to further enhance EU-India services trade and is therefore strongly encouraged by the European service sectors.

II. HORIZONTAL ISSUES

1) STARTING LEVEL OF THE SERVICES NEGOTIATIONS

The current level of binding commitments between the EU and India are the GATS agreement and respective schedules of GATS Commitments by the two parties.

The commitments by India towards liberalisation of services trade in the Uruguay Round are considered as very low and disappointing. ESF was encouraged by the build-in agenda enshrined in GATS Article XIX and was looking towards better commitments by India in the context of the Doha Development Agenda (DD). But the talks collapsed in July 2008. As India didn't participate to the Trade in Services Agreement (TiSA) from 2013 to 2016, and finally decided to pull out of the Regional Comprehensive Economic Partnership (RCEP) in 2019, there are no fresh evidence of better market access openness with India. ESF looked at the highest level of commitments that India offered once. Therefore, ESF takes for granted that respective best GATS offers, including oral commitments at the WTO Signalling Conference on Services on 26 July 2008 in Geneva, form the basis of the services and investment FTA negotiations with India.

India has signed limited FTAs with Sri Lanka (1998) and Thailand (2003). ESF notes that India has pursued bilateral FTAs with some trading partners in the meantime, but none of these FTAs seem to have significant commitments in the field of trade in services. However, ESF invites EU negotiators to be vigilant and to carefully screen existing deals and on-going trade talks with other countries to ensure to capture all possible progress made by India towards other trading partners. ESF notes that India-Mauritius CECPA (Comprehensive Economic Cooperation and Partnership Agreement) was signed in February 2021, and the India-UAE Comprehensive Economic Partnership Agreement (CEPA) was signed on 18 February 2022, with commitments on services.

More importantly, the India-Australia FTA, officially called the Australia-India Economic Cooperation and Trade Agreement, was concluded on 2 April 2022 (see [full text here](#)). This is the first trade agreement signed by India with a developed economy after more than a decade. Interesting to note that it has been agreed between the parties that within 75 days of the signing of the pact, a negotiating subcommittee will start negotiations on issues including other areas for market access for goods and services, a digital trade chapter, and a government procurement chapter to transform the FTA into a CECA (Comprehensive Economic Cooperation Agreement) by the end of 2022. It is understood that both countries will facilitate the recognition of professional qualifications, licensing, and registration procedures between professional services bodies in both countries. Australian services suppliers in 31 sectors and sub-sectors will be guaranteed to receive the best treatment accorded by India to any future free trade agreement partner, including in: higher education and adult education; business services (tax, medical and dental, architectural and urban planning; research and development; communication, construction and engineering; insurance and banking; hospital; audio-visual; and tourism and travel.

Apart from these deals, bilateral trade negotiations are going on with Bangladesh, Colombia, the GCC (Gulf Cooperation Council), Iran, Israel, New-Zealand, the Russia-led Eurasia Economic Union, Uruguay and Venezuela. It is not yet clear whether services will be part of that possible interim deal. We also hear that India and Canada have agreed in March 2022 to resume negotiations for a free trade agreement (FTA) and are eyeing an interim trade deal to bolster bilateral commerce. Similarly, and more importantly, [India and the UK have launched FTA talks](#) and concluded the fifth round of negotiations

in July 2022, where Trade in Services including Financial Services & Telecommunications, Investment are discussed. The parties aim at concluding the talks by end 2022.

ESF calls upon the EU to monitor these talks and aim at similar ambitious target in terms of services market access and of timing.

As a question of principle, ESF would like to recall that the underlying theme of this FTA, as with all FTAs, should be the ability of EU domiciled private sector companies to compete in the host market with the minimum of differential treatment compared to host country domiciled public or private sector companies. Competition widens consumer choice, lowers prices, results in better quality goods and services, creates jobs and helps the host society to keep step with technological developments. This positively impacts the skills of the workforce and drives innovation in the host market.

2) SERVICES COMMITMENTS WITH A NEGATIVE LIST APPROACH

ESF encourages the negotiators to use the negative list approach with India, at least for the aspects related to establishment. As we have previously argued, this way of negotiating obliges the negotiators to review together all service sectors and produce greater liberalisation results and greater clarity, since it is much easier for companies to assess whether their sector is covered or not and what the limitations are. If however such a method would not be possible, we urge the EU to reach out similar high level of commitments through the positive approach.

3) MOVEMENT OF NATURAL PERSONS (MODE 4)

The movement of services providers on temporary basis (GATS Mode 4) is absolutely essential for services companies to properly serve their customers. When a good or service is exported to an overseas market there is frequently a need to transfer skilled personnel overseas to deliver that export or offer professional advice and ongoing services relating to it. In the case of manufacturing industry and large public works contracts, an EU contractor tendering for a contract will need, if the tender is successful, to be able to offer the relevant package of skills on the spot. In the case of financial or professional services for example, these services are frequently delivered in third country markets through local establishments and offices, enabling the service-provider to cater not only for international corporate clients' needs throughout the world, but also for local corporate and private clients, as well as state and local governments. Our companies need to be able to send to India their personnel to their subsidiaries and other commercial presences (intra-corporate transferees – ICT) as well as to their clients for temporary periods on a specific contract basis. We encourage the EU negotiators to ensure that India will improve these possibilities and facilitate the granting of necessary visas and works permits in an expedited manner.

Looking at its 2005 GATS's Revised Offer for Mode 4, India had clarified that the GATS applies to *temporary* movement of natural persons. India had extended Business Visitors' entry from 90 to 180 days, which was welcome. Intra-corporate transferees might enter India for up to 5 years. Contractual Service Suppliers could stay up to one year in order to complete a contract. India's Revised Offer had added Integrated Engineering, Architectural, Urban Planning and Landscape Architecture, R & D, Management consulting (and related services), and Tourist Guide services to existing commitments in Engineering, Computer and Related-, Hotel and Restaurant & Travel Agency and Tour Operator services for Contractual Service Suppliers and Independent Professionals. These Mode 4 commitments will be more than welcome and should be transcribed into the FTA India Schedule.

What is more, there is also a substantial interest at European services providers to allow for mode 4 access for qualified Indian personnel to the EU to a sufficient degree. Thus, the EU services sector supports, in principle, Indian requests to the EU to open up more in this respect (e.g., for longer time periods). While we acknowledge that such demands by India may be sensitive under labour market aspects, the needs of European business as well as demographic trends in Europe, which seem to increase the need for more openness of the EU in this area, certainly should be factored into the EU's negotiating position on the FTA with India. Indeed, there are many talent shortages in many EU member states. In addition, as Mode 4 access to EU markets constitutes a major Indian negotiation target, the EU could get substantially more from India in terms of market access commitments in services and elsewhere in exchange for a substantial offer on Mode 4 access.

4) FOREIGN DIRECT INVESTMENT REGIMES

FDI Market Access

ESF members call for the removal of all remaining equity caps that prevent EU businesses to fully control their investments and operations in India, or at least call for the possibility of majority ownership in all services sectors, if necessary, through appropriate negotiated phasing out period. India's GATS Horizontal Offer of removing a Mode 3 requirement which required foreign acquisition of Indian shares to systematically receive FIPB (Foreign Investment Promotion Board) approval should be capitalised in the FTA. This was an unnecessary administrative and burdensome barrier.

We take note that the Foreign Investment Promotion Board (FIPB) has been replaced by the Foreign Investment Facilitation Portal (FIFP) to speed up the FDI inflow and to increase the transparency in the FDI approvals in the country. FIFP replaced FIPB in May 2017. The Foreign Investment Facilitation Portal (FIFP) is the online single point interface is being administered by the Department for Promotion, Ministry of Commerce & Industry to facilitate Foreign Direct Investment (FDI) in the country. We understand that earlier if the Foreign Direct Investment (FDI) amount exceeds Rs3,000 crore then it must be approved by the Finance Minister and subsequently by the Cabinet Committee on Economic Affairs (CCEA) on the recommendations of the FIPB. Worth to mention that, to our understanding, FDI proposals above Rs 5,000 crore (+/- €600 million) continue to be cleared by the Cabinet Committee on Economic Affairs.

This is a welcomed development that ESF strongly encourages. ESF calls upon the European negotiators to ensure that the open services sectors will be bound under the FTA, and to try to further open those which are still restricted to equity caps of 74% or 49%. (see more in Section II.4 here below)

Given that the approval of individual ministries or authorities remains required in many cases of foreign investment, more transparent rules should be edited as to lift up the impression of possible discriminatory economic need tests. ESF notes that there are still eleven notified sectors/activities requiring government approval including many services sectors. These eleven sectors are Mining, Defence/cases relating to FDI in small arms, Broadcasting, Print media, Civil Aviation, Satellites, Telecom, Private Security Agencies, Trading (Single, Multi brand and Food Products), Financial services not regulated or regulated by more than one regulator/ Banking Public and Private (as per FDI Policy) and Pharmaceuticals.

The Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry has been given the responsibility of overseeing the applications filed on the Foreign Investment Facilitation Portal and to forward the same to the concerned Administrative Ministry. A Standard Operating

Procedure (SOP) developed by DIPP in consultation with the concerned Administrative Ministries is being followed for processing of the FDI applications. It is appreciated that approval letters in Standard Format will be uploaded on the Portal itself for the benefit of the Investors

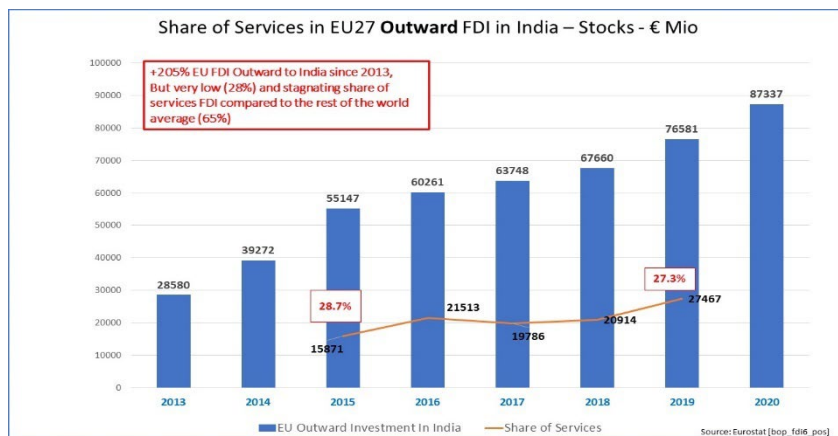
This means also that about 91 to 95% FDI proposals are under the automatic route (see list of 32 sectors [here](#)). This reform is appreciated, and we call upon the negotiators to obtain binding commitments in the FTA registering the automaticity of the EU FDI under the Indian legislation. We welcome the publication of the Consolidated FDI Policy by the Department of the promotion of Industry and Internal Trade (DPIIT) ([last one dated 15 October 2020](#)), which provides better transparency to potential investors. We take note that for the sectors/activities not listed in the report, FDI is permitted up to 100% on the automatic route, “subject to applicable laws/regulations; security and other conditionalities”. ESF reiterates its call upon the European negotiators to try to further open those sectors which are still restricted to equity caps of 74% or 49%.

FDI Protection

ESF welcomes the announcement by the two parties of the negotiation of a separate investment protection agreement. It is not clear however what will be the scope of such an agreement, and whether the market access element will be in this agreement or in the FTA. As it occurs that for instance, Market access commitments were negotiated in the Draft EU-China Comprehensive Agreement on Investment, but there was no FTA negotiated with that country in parallel. The European Services Forum expresses its strong preferred view that the market access part related to FDI be negotiated into the FTA.

The EU is the first foreign investor in India, with €87.3 billion stocks in 2020, which is significant but way below EU foreign investment stocks in China (€201.2 billion) or Brazil (€263.4 billion). EU investment in India however increased significantly since the beginning of the negotiations of the FTA in 2007, going from €3.2 billion in 2009, to 39.2 in 2014 and 87.3 in 2020. This is an increase of +2650%! Should barriers to EU services investors be removed, there is a significant potential to improve the outward FDI by the EU in India, which will create growth and jobs in this promising market.

In particular, it is important to notice that the share of the investment going to services sectors in India by EU Services sectors is much lower than the world average (+65%), with only +/- 28%, and that share is stagnating for the last decade. There is no doubt that new market access opportunities through the FTA will contribute to increase EU services investment in India.



On the other hand, India is still a very modest investor in the European Union: €4.5 billion in 2013 and €6.5 billion in 2020, with a peak of inward FDI by India to EU27 of €9.4 billion in 2015⁴. The EU FTA and Investment Protection agreement will be appropriate tools to allow more FDI from India to the EU, including in the services sectors where India is at the front.

5) BETTER ACCESS TO PUBLIC PROCUREMENT

With its huge population and an important increase of urbanization, India will face important challenges in providing relevant infrastructure for its citizens. The demand of road, rail, ports, inland waterway and other public transport infrastructure, of energy, broadband telecommunication network and drinking water networks, etc. will increase exponentially in the coming decades. The experience and expertise of European companies in these fields would be an important asset to help fulfilling this demand, provided that the public procurement market in India will be open accordingly.

The FTA negotiations with India are the right instrument towards this endeavour and ESF strongly supports better access to India public procurements at all levels, in all public entities, for relevant services sectors (architects, engineers, construction services, transport services, waste management services, water distribution services, education services, telecommunications, IT and Computer related services, financial services, etc.). Given the sensitivity on this issue in India, including at sub federal level, appropriate negotiated phasing-out period might be envisaged.

European companies face serious and recurring restrictions on access to India's public procurement. The market access negotiations in public procurement through the FTA with India are of great importance given that India is only an observer to the WTO Government Procurement Agreement (GPA) and has not started any negotiating accession process. ESF takes note of the recent adoption of a political agreement for the setting up on an EU International Public Procurement Instrument (IPI) and encourage the EU to invite India to increase access to EU bidding companies, so as to re-establish a level playing field in the field of international procurement markets. Indeed, Indian companies have already good access to procurement in the ICT sector in the EU, which is not reciprocated by India. Furthermore, we invite the negotiators to monitor the on-going negotiations between India and other trading partners on that issue, in particular the one with Australia, and to obtain at least similar access and conditions.

6) 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.

As India is seeking, in its [National Digital Communications Policy, 2018](#), to “unlock the transformative power of digital communications networks and to achieve the goal of digital empowerment and well-being of the people of India”, this is the most relevant time to discuss with India adequate digital trade provisions.

a) Telecommunications services under the GATS Agreement

The Schedule of Commitments from India in telecom services is of low level in terms of market access under the GATS agreement. It is appreciated that India did commit to the Basic Telecommunication

⁴ Source: [Eurostat \[bop_fdi6_pos\]](#)

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 reviewed to bring it to the level of modern digital economy.

b) Digital Services

A Digital Chapter of the EU – India 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.

Let us highlight some particular issues:

- **Access to source code**

Cyber security and confidentiality of data should be seen as enablers for data flows in a secure environment. Cyber security rules should not be used as artificial barriers to trade by the Indian government. Furthermore, forced/mandatory disclosure of source-code as a condition for market access should not apply to civilian use of ICT. Mandatory deposits of source code with a 3rd party for review, present an uncontrollable risk of lost control over IPR hereby. If introduced, this would present an absolute and unsurmountable market access barrier. In addition, mandatory source code disclosure obligations increase the risk of uncontrolled leaking which introduces new threats and hence increased cyber security risks. In case of policy proliferation such development would fundamentally increase threats and risks for all nations. Hence any legitimate exceptions should be narrowly tailored to non-civilian use of ICT. We urge the negotiators to remove this barrier.

- **Data localisation requirement**

India is an important market for European services businesses. India also has major IT and computer companies which are significant actors in the global digital economy, with a strong interest in supporting its competitiveness and growth. Data localisation requirements and other policies that restrict data flows are likely to constrain growth and innovation, and reduce the scope for leading Indian IT firms and their counterparts in the EU to engage in business and investment contributing to promoting India's competitiveness and growth. According to a 2014 report by the European Centre for International Political Economy (ECIPE), widespread data localization requirements in India could lead to a 2 percent decrease in foreign investment into India, cost the average Indian worker as much as 11 percent of their monthly salary, and result in welfare losses of as much as \$14 billion.

In November 2018, the European Services Forum and 8 other coalitions of service industries wrote to the Indian Prime Minister and other Indian authorities to express our serious concerns

in relation to the Indian Government's apparent increasing use of mandatory data localization requirements, including the Reserve Bank of India's 6 April 2018 Directive requiring that all data relating to electronic payment systems be stored locally in India, as well as the data localization requirements contained in the 2018 Personal Data Protection Bill (PDPB) (see following section on PDPB).

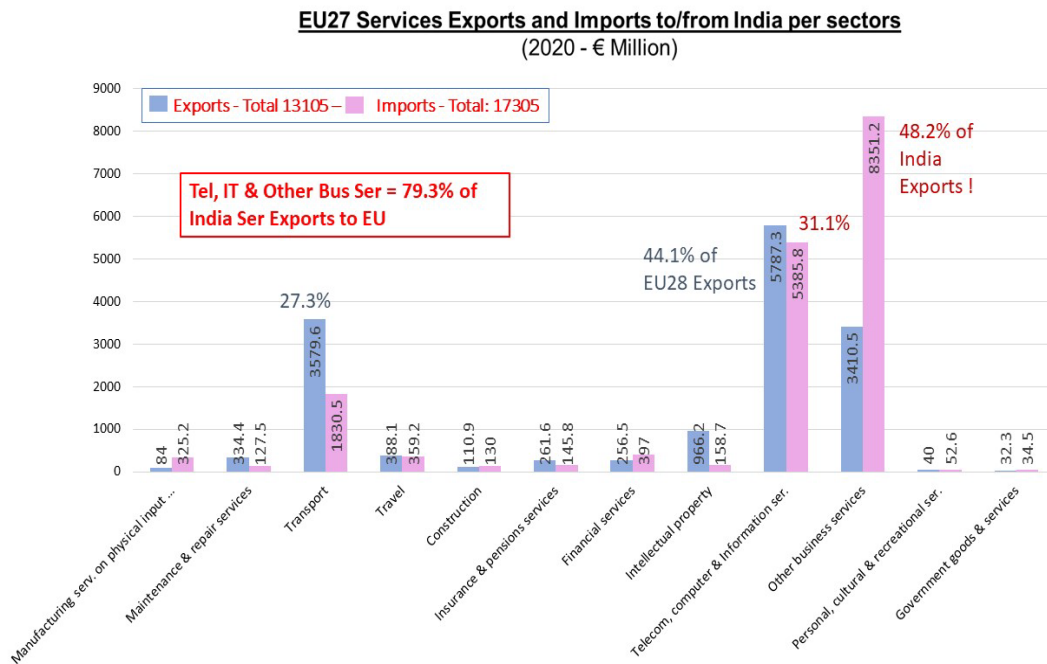
- **India's Data Protection Bill (DPB)** and more specifically [India's Joint Parliamentary Committee Report](#). This report was presented before the Lok Sabha on 12 December 2021. It would have formed the basis of the new DPB Data Protection Bill. That report contains a number of problematic elements that, beyond impacting the ability of firms across sectors to do business in India, stands to set a particularly detrimental precedent with respect to the regulation on sharing of non-personal data, on data localization⁵, and restrictions on the cross-border movement of data.

The Report includes new recommendations and novel concepts to the PDP (Personal Data Protection) Bill, which, if enacted, would have created powerful disincentives for India's innovation ecosystem and the promise of a trillion-dollar digital economy. Key recommendations of concern in the new Data Protection Bill were the inclusion of non-personal data, restrictions on cross-border data transfers, data localization obligations and mandatory hardware/IOT and AI software certifications. The recommendation to establish a domestic alternative to the international SWIFT banking system was also unprecedented and appears beyond the scope of the Report's objectives, and would have significant detrimental impact on India's financial sector and digital payments ecosystem.

The Report's recommendations ran counter to global standards for data protection and competition. Mandates for companies to locally store their data in India would degrade the privacy and cybersecurity protections by limiting state-of-the-art solutions that are globally available. If enacted, such recommendations would have led to a significant deterioration in India's business environment, degrading the Ease of Doing business in and with India, and negatively impacting India's domestic start-up ecosystem and global competitiveness. The ability of foreign companies to participate in the Indian market would have been dramatically impacted, thereby reducing foreign direct investment in India. Similarly, the impact on IT exports from India - which are valued at near \$200 Billion annually and are highly dependent on the storage, processing, and analysis of data in India's largest trading partners, would have been extremely damaging.

As the proposed rules would have applied to all personal data processed within India, they could in fact have covered personal data collected from residents of foreign jurisdictions and sent to India for processing. As many organizations outside India rely on Indian-based companies to process foreign personal data (BPO Processes), the application of Indian privacy rules to the processing of such data in India would have imposed an added layer of regulation, discouraging the use of Indian-based service providers. It is important in that regard to remember that +70% of all India exports of services to the EU are digital services (IT & Computer Services, Management consulting in IT management, etc. (see chart below), which is a really astounding figure!

⁵ "Critical data" must be processed locally in India. "Sensitive personal data" (including biometric information, government identifiers and financial information) may be transferred out of India, but a copy of the data must be stored in India



ESF welcomes the fact that India decided to withdraw the controversial Personal Data Protection Bill in August 2022, after two years of debate and consultation. The Indian government has announced that it will create a comprehensive legal framework for policing the digital universe. While the government has set the ball rolling for redrawing the new Bill, its contours however aren't known yet. There is rumour that an all-new 'Data Protection Bill' will be tabled in the ensuing winter session of the Parliament in December 2022. Separately, the Indian government is also mulling overhauling the existing Information Technology (IT) Act of 2000 and possibly replacing it with an all-encompassing Digital India Act.

India, home to the second largest base of internet users, lacks an independent data regulator. The data subjects have limited rights. As an aspirational digital economy with big stakes on 5G infrastructure, the nation needs to show better preparedness to navigate the mounting data challenges. ESF expresses the hope that an inclusive data protection legislation empowering users and enthusing businesses can catalyse the change.

7) OTHER HORIZONTAL ISSUES

The negotiations should also aim at removing or reducing the following barriers and solve the following issues:

- (a) Eliminate economic needs tests, or at the very least provide systematic transparency and right of appeal when demand rejected
- (b) Secure commitment to adopt disciplines that provide transparency for regulatory and procedural transparency, including prior comment on draft legislation and regulation.

In essence, the purpose of the EU negotiators should be to start negotiations with the same level of commitments undertaken by the signatories of the [Reference Paper](#) of the WTO Joint Initiative on Services Domestic Regulation, looking forward to an higher level of commitment, equal to the one reached in the recent EU FTAs like with the UK (both in the "performance requirements" section and in the "domestic regulation" section).

III. SERVICES SECTOR SPECIFIC ISSUES

Method: In absence of full knowledge of current practice of all sector specific services legislation and regulation in India, given that the purpose of the Free Trade Agreement is to improve the current legally binding situation of India towards the European companies through an international treaty, i.e. the India's Uruguay Round Schedule of Commitments, and given that the basis of the services and investment negotiations between EU and India are their respective DDA GATS Revised Offers, and given that the details of the WTO Signalling Conference on services of July 2008 are not public, ESF comments and recommendations are based on the content of India GATS Revised Offer, plus possible intelligence from ESF members. Some sectors are therefore analysed in more extensive way. For the convenience of the readers, we have adopted the order of the WTO W120 classification list.

ESF and ESF Members reserve the right to send to the negotiators separate and more detailed positions, that we urge them to fully take into consideration.

A. PROFESSIONAL AND BUSINESS SERVICES

1) LEGAL SERVICES

We noted with disappointment that India made *no* commitments in legal services in WTO, nor with Australia recent FTA. We urge the negotiators to monitor the commitments that would eventually be taken by India with the United Kingdom for that sector.

Specific Overall Objective: Removal of all barriers to market access and national treatment for providers of international legal services into the India market (including advisory services, arbitration and alternative dispute resolution).

Secure measures to allow EU law firms to practise in India. The passage of the Indian Limited Liability Partnership (LLP) Act in 2008 prepared the ground for this by reforming the framework for the operation of professional service firms in India. Implementing regulations under the LLP Act, together with amendments to the Advocates Act (1961) (or equivalent measures) and the tax code will have to follow in order to provide certainty for EU law firms.

Primary Objectives:

- (a) Remove prohibition on ability of EU qualified lawyers to practise law in India in an advisory capacity (EU lawyers have no intention of appearing in the Indian courts);
- (b) Implement LLP Act to permit an EU law firm to establish a branch of its international LLP or an India-headquartered LLP;
- (c) Establish right of an EU LLP to employ Indian advocates and to take them into the partnership and vice versa;
- (d) Establish right of an EU law firm to staff its office with professionals and support staff from abroad, subject to immigration rules;
- (e) Establish right of an EU or EU-owned law firm to use the name by which it is internationally known.

Secondary Objectives:

- (a) Clarify how EU law firms in India are to be regulated and create a transparent and modern process for regulating law firms, based on international best practice, as discussed in the Horizontal Provisions sections above (not necessarily through the Bar Councils);
- (b) Creation of a foreign lawyers register under the auspices of the Bar Council;
- (c) Unambiguous removal of any restriction on the number of partners in a partnership, including a partnership under the LLP Act;
- (d) Amend sections 10 and 47 of the Income Tax Act to provide for a one-time exemption from tax on capital gains;
- (e) Relaxation of the restrictions on marketing by law firms (recent decisions by the Bar Council of India to permit a degree of advertising and marketing do not yet give sufficient clarity to Indian law firms);

Obtain agreement for lawyers to enter multi-disciplinary partnerships.

2) ACCOUNTING, AUDITING AND BOOKKEEPING SERVICES

ESF calls upon the EU Negotiators to push for liberalisation of the accountancy market as well as the audit market in India. This sector is severely restricted by the Indian Chartered Accountants Act of 1949.

India has made commitments in Modes 1-2 (excluding auditing services) in its GATS Revised Offer of 2005. We would like to see new commitments in Mode 3. Mode 4 is unbound, except as indicated in the horizontal section, with the additional requirement of obtaining professional indemnity insurance from home country of service provider.

Specific Overall Objective: Commitments by India to removal of all barriers to market access and national treatment, with additional commitments where necessary for this objective.

Primary Objectives:

- (a) Ability to use global network brand names as used in EU.

Secondary Objectives:

- (a) Remove Institute of Chartered Accountants of India (ICAI) restriction on the number of statutory audits per partner for EU service-providers;
- (b) Remove/ relax audit firm rotation rules in financial services' audits for EU service-providers;
- (c) Remove maximum statutory insurance company audits per firm for EU service-providers;
- (d) Remove maximum statutory bank audits per firm for EU service-providers;
- (e) Allow more Indian citizens to be trained by EU firms to become professional accountants;
- (f) Allow Indian students to undertake training programmes and qualifications provided by professional bodies located in the EU;

- (g) Remove restrictions on the number of partners in traditional partnerships when involving EU firms;
 - (h) Allow local firms with internationally recognised names/logos and with additional weight of global networks to use those names and logos when signing reports of audits of Indian companies;
 - (i) Secure commitments to independent regulation of accountants (consistent with standards throughout the EU and to allow equivalence under the EU Statutory Audit Directive) on the analogy of, for instance, the UK Financial Reporting Council;
 - (j) Allow EU audit firms to register directly with the Government or independent regulator (and not via the ICAI) by setting up a separate registrar.
- 1) Secure commitment to encourage reciprocity of membership of professional bodies between India and member states of the EU;
 - 2) Secure commitment to allow mutual recognition of qualifications for the purpose of carrying out statutory audits;

Secure commitment to implement external independent review of audit firms.

3) ARCHITECTURAL SERVICES:

India tabled a DDA GATS revised offer in architectural services (CPC 8671), committing in Modes 1-3. However, market access is limited to incorporation with an existing Indian firm. The FIFB approval has been removed. Ask for the removal of obligation to incorporate with an Indian firm.

4) ENGINEERING SERVICES:

Ask for the removal of obligation to incorporate with an Indian firm.

Integrated Engineering Services Urban Planning and Landscape Architecture Services:

India's GATS new offer commits Modes 1-3, though, as with engineering services, market access is limited to incorporation with an existing Indian firm. Ask for the removal of obligation to incorporate with an Indian firm. We note that this sector has been fully liberalised in the Australia-India FTA and require the EU to obtain a similar commitment.

Computer and Related Services: India's decision to commit at two-digit level in its revised GATS offer (CPC 84) and remove foreign equity ceilings in that sector is very welcome in this important sector for India economic development. We urge the negotiators to bind such a level of commitments in the FTA. However, we would prefer that India commits the removal of market access limitations that only permit establishment through incorporation. We note that this sector has been fully liberalised in the Australia-India FTA and require the EU to obtain a similar commitment.

5) RESEARCH AND DEVELOPMENT SERVICES:

In its GATS revised offer, India has added Mode 1 commitments on R&D services in agriculture and Modes 1-3 commitments on R&D services in social science and the humanities. It has also removed its foreign equity ceiling on its existing commitment on R&D services, though access is limited to incorporation. Ask for the removal of obligation to incorporate with an Indian firm. Research and

development services present an important potential in India in many industrial areas, where many foreign firms might be interested in the opportunities provided by the immense reservoir of high skills graduates coming out of Indian universities, but a lack of openness hampers that development. India has taken limited commitments in that sector with Australia. ESF encourage the EU negotiators to obtain similar access.

6) REAL ESTATE SERVICES:

Real estate on a fee or contract basis (CPC 822) should be committed, though in GATS offer foreign investors must have had prior collaboration with an Indian real estate firm and access was subject to FIPB approval. Obtain similar limited opening than the one granted to Australia.

7) RENTAL AND LEASING SERVICES (WITHOUT OPERATORS):

India has made new commitments relating to ships and aircraft, though FIPB approval was required for market access. Obtain similar limited opening than the one granted to Australia.

8) OTHER BUSINESS SERVICES:

India has taken new Modes 1-3 commitments with Australia in advertising services, management consulting, services related to management consulting, technical testing and analysing services, services incidental to fishing, to mining, services incidental to energy distribution, placement and supply of personnel, related scientific and technical consulting services, maintenance and repair of equipment, building cleaning services, packaging, convention, specialty design & photographic services. Obtain similar limited opening than the one granted to Australia.

B. POSTAL AND COURIER SERVICES:

Competitive postal, courier and express delivery sectors are vital to the infrastructure of any economy. By not scheduling commitments any commitments multilaterally or in its FTAs including the most recent ones, India is limiting its potential for economic growth. The effort undertaken to change national legislation provides an opportunity to ensure legal clarity and certainties for courier companies.

We would welcome commitments for courier and express delivery services allowing foreign express delivery operators to continue to invest and operate in India without any additional restrictions, costs or preferences to national post over the private express delivery services. Although this section requires further verifications, we propose the following:

- Time sensitive letters, parcels should continue to be allowed to be carried by private Express Delivery Service providers without any restriction.
- “Couriers” (Express Delivery Service Providers) should be enabled for seamless end-to-end logistics with appropriate changes in regulations, act and rules as their importance was well experience and highlighted during the pandemic Private express delivery service providers must continue to be allowed to carry parcels and documents in all weight segments.
- Private EDS/ Couriers should not be restricted on carriage of things that are otherwise not restricted by the national security agencies or the general law of the land.
- Private fleet operators should not be forced to carry mail bags at a price set by Regulator unless fleet operator finds the commercial proposal acceptable.

- Interconnectivity between networks of Postal Service Providers should be allowed on mutually acceptable terms and not as a mandatory requirement.
- There is no need for another policing authority, Regulator for private Courier/EDS sector. The highly competitive private express delivery services are already regulated by several government agencies, the Consumer Protection Act and the published Terms of Contract with the customers like many other industries in India that do not have additional sector specific regulator. EDS providers are also offering wide range of innovative products of high service standards that are determined by market expectations and contract. The services are not comparable to the universal service mail and over 2500 private operators are present in the EDS/Courier sector so it's not necessary to set up a Regulator with the mandate to control activities of the well performing private EDS sector which is not offering a service comparable to universal service mail.
- Furthermore, FTA customs duty benefits must be enabled for Import clearance under Courier mode in India. This should include at least:
 - Goods shipped on the Express mode (known as Courier in India) must get Customs cleared in a seamless manner under the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010
 - Speedy Customs Clearance must be enabled on the basis of imaged copies of "Certificate of Origin" with no requirement for a physical copy

In the longer term, best practices, such as moving towards self-declaration on existing shipment paperwork as embedded in the Regional Comprehensive Economic Partnership (RCEP), should be considered.

C. DIGITAL TRADE AND ELECTRONIC COMMUNICATIONS SERVICES:

The liberalisation of the Indian electronic communications market has delivered great benefits to the Indian economy and its citizens. The India IT industry overall has been a global success, exporting more than €30bn of services. Competition has delivered lower prices, greater choice and wider network coverage.

1) Foreign ownership restrictions

ESF takes notes that the Department for Promotion of Industry and Internal Trade (FDI Division) of the Ministry of Commerce & Industry of the Government of India has regularly modified and consolidated its FDI Policy since 2015, and for Telecom Services, FDI is allowed up to 100%, with 49% on the "automatic route" and beyond 49% on the "government route". The sector is subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time, except "Other Service Providers", which are allowed 100% FDI on the automatic route. ESF call upon the negotiators to bind such a commitment in the FTA.

2) Localisation of domestic traffic

ESF is concerned that domestic traffic is not allowed to route outside India in any manner. It must be originated and terminated locally.

In the field of mobile telephony, private sector players are placed at a significant competitive disadvantage to the public sector operators, notably with respect to allocation of spectrum. Spectrum is the main source every mobile operator needs to have in order to deliver mobile services. In Europe, for example, spectrum is allocated among operators via public auctions. This ensures a fair and

competitive process of allocation, but also economic efficiency. In India, some special favours and grants to foreign companies experienced preferred spectrum allocations and waivers of fees favoring public sector operators (BSNL and MTNL). These special privileges constitute clear examples of “state aid” that both distort the market and are inconsistent with India’s commitments under GATS. ESF urges EU negotiators to ensure that this kind of discrimination should not occur for the forthcoming auction of the 5G spectrum at a time where India is negotiating further liberalisation with the EU in the FTA framework.

3) High Regulatory Levies, USO fees and Taxes

License Fees imposed by way of a Revenue Share on licence holders in India are among the highest in the world (8%) and are not tied to the cost of administration and running the regulatory regime. The Universal Service Obligation (USO), which is a part of annual license levy currently, amounts to 5% of AGR (Adjusted Gross Revenue).

Multiple levies of license Fee: As a general principle, license fees/taxes are collected from the consumers while buying the services from TSPs/ISPs and then TSPs/ISPs deposit the same with the Government/relevant authorities. As per license conditions, TSPs/ISPs can also buy telecom resources from other TSPs in order to provide the service to end users/consumers. This activity is in purely B2B mode of service and not B2C. As per current license condition, TSPs need to incur license fee while buying it from other TSPs. This part of transaction to provide service is resulting in double taxation / multiple levies as once while buying resource from TSPs and then while selling it to the customers. This results into a cascading impact of cost passed on by licensee to licensee thereby increasing the cost of services to the end consumers. It is ultimately the consumers who are paying the double license fees.

4) Issues with Emerging Technologies/Services

The Current telecom license/policies are primarily written with a focus on the consumer/retail voice segment and do not necessarily serve the needs of enterprise data customer networks and services. The following policy/regulatory restrictions are detrimental for the growth of telecom sector, and we would like to encourage the negotiators to look at them so as to improve operations:

1. Restriction in interconnectivity between PSTN and leased line based CUG/ IPVPN.
2. VOIP / SIP not allowed to ISPs.
3. Internet licensees are not permitted to create a Virtual Private Network/ / CUG or SDN/ NFV etc.
4. Policy should allow hybrid mode of operation (use of public internet and private lease line) for the roll out of SD-WAN and other technologies. It should not be restricted to Lease Line only.

5) General Resale

The Indian Government has now introduced the UL VNO License to Resale telecom services. This is welcomed and should be committed in the FTA. Experience has shown that resale expands the market by offering improved service, greater innovation and more competitive pricing and therefore should be encouraged.

6) Co-Terminus License even paying for full entry fees:

Subsequent authorizations taken under UL license at different times get expired with the end of first authorization even after paying full entry fees. This is unfair and not logical, it needs correction. We request to either allow a full period or charge to pro rata entry fees.

7) **Multi parenting is not allowed for all the access services in ULVNO:**

Multi parenting is not allowed for wireless. In case of wireline there is non-level playing field wherein a UL VNO access (Cat B) is allowed multi-parenting using same EPABX but the same is not allowed for other access licensee.

D. CONSTRUCTION:

We welcome India's full opening of the market access to construction services in Modes 1, 2 and 3 in the India-Australia FTA. We urge the EU negotiators to obtain similar commitments for the EU.

E. DISTRIBUTION SERVICES:

India's commitments with Australia in **commission agents' services** and **wholesale trade**, market access in mode 1 and 2 have been granted. As for mode 3, the opening is "subject to approval of RBI/ Government and in conformity with the FEMA regulations, as applicable, and requirements as may be specified under relevant state and local level laws and regulations". Such partial liberalisation is welcomed, and the EU negotiators should obtain the same level, though transparency of the requirements, including at state and local level laws and regulation should be provided.

Currently FDI in distribution service is still restricted to 51% for single-brand retail and largely impossible for multi-brand retail. Foreign investment in Single Brand Product Retail Services is allowed up to 51 percent "subject to conformity with India's Consolidated FDI Policy Circular of 2020 and FEMA regulations and any other laws and regulations including at state/local level, as applicable". The same conditions prevail in Franchising services in respect of single brand retailing services. A removal of these equity caps is essential.

F. ENVIRONMENTAL SERVICES:

India has taken Modes 1-3 commitments in **refuse disposal services** and **sanitation and similar services**, with Australia, and the EU should obtain the same level of commitments. Furthermore, we would like to see expanded commitments to the other environmental services, like sewage services and other environmental services like water and waste management services. The development of these services will be crucial for India in the near future as the urbanisation of the country expands.

G. FINANCIAL SERVICES:

1) BANKING

ESF calls upon EU negotiators to work towards getting at the very minimum the very modest improvements obtained by Australia in its recent FTA with India in the banking and asset management sectors, compared to the GATS Revised offer of 2005. There is a need as well to monitor the ongoing

talks on those sectors with the United Kingdom. The below section is still subject to further verifications, and ESF reserves the right to come back on these issues.

Specific Overall Objective: Commitments by India to removal of all barriers to market access and national treatment, with additional commitments where necessary for this objective.

Primary Objectives:

- (a) Full national treatment of Wholly Owned Subsidiaries (WOSs) of EU Banks with no limitation on EU equity holdings and no requirement of “one form of presence” (i.e. both branch and WOS permitted for same group);
- (b) Full national treatment for EU banks with established commercial presence, and for EU banks in the licensing of new bank branches and removal of the present cap on new branch licences for EU banks.
- (c) If domestic banks are ever permitted to open new branches without prior permission (as recommended in [the Rajan Report](#)), there should be equal treatment for EU banks that are already established in India.

Secondary Objectives:

Ownership:

- (a) Overall limit on foreign holding in a domestic bank to be increased from 74% to 100% for EU-owned entities;
- (b) EU-owned banks to be allowed stakes in Indian banks of up to 100%, after a transitional period in which failing public/private sector banks can merge with EU banks;
- (c) EU banks to be allowed to raise Indian Rupee (INR) subordinated debt and perpetual Tier II debt for their Indian operations;
- (d) EU-owned banks converting from branch to WOS status to have the same minimum capital requirements as a domestic bank;
- (e) Removal of requirement that 26% of the paid up capital of a WOS or privately-owned bank acquired by an EU services provider must be held by resident Indians within 3 years of incorporation or take-over;
- (f) If 74% cap is retained for a transitional period, removal of the requirement that 26% must be held by resident Indians so as to permit strategic investments by Foreign Institutional Investors (FIIs);
- (g) Removal of current maximum limit of 10% on any foreign bank investment in a Public Sector bank so as to permit strategic partnerships;
- (h) Removal of restriction on voting rights currently capped at 10% in private and 1% in public sector banks regardless of actual shareholding;
- (i) Relaxation of current threshold of 5% for foreign banks having a presence in India, and 10% for other foreign banks, for holdings in Indian private banks, possibly by transitional stages (this may need special exemptions from SEBI’s open offer provisions in case of listed private banks);

- (j) Clarification of policy on whether a foreign-owned WOS is a foreign or domestic company for downstream investments;
- (k) Removal of the 74% cap on foreign investment in asset management companies;
- (l) In accordance with Horizontal Objective (g), setting of fixed period in which decisions on acquisitions or mergers must be taken by regulators or deemed to be approved;
- (m) Allow EU banks an FDI limit of 100% in Asset Reconstruction Companies – currently the limit is 49%.

Branches:

- (a) Immediate removal of the current quantitative cap on new branch licences for EU banks or, failing that, removal after a transitional period;
- (b) Removal of the requirement for prior permission for branch licences (either immediately or, failing that, after a transitional period);
- (c) Removal of the requirement that branch licence applications can only be submitted once a year in an annual investment plan;
- (d) Removal of all quantitative restrictions on licence applications for branches established in Tier 2/3 cities and rural areas, so as to help under-banked areas or, failing that, a right to open certain number of branches in Tier 2/3 rural areas in return for lesser number of branches in Tier 1/2 cities;
- (e) Full national treatment on branch licensing for EU-owned banks either incorporated in India or with listings on the Indian Stock Exchange;
- (f) Removal of current requirement that branch licences may be denied if foreign banks' aggregate share of the banking market exceeds 15%. Failing that, agreement that the definition of the banking market is limited to on-balance sheet business;
- (g) Relaxation of regulation which currently prevents foreign banks from buying **shares** of a systemically important deposit-taking non-banking financial company (NBFC).

National Treatment:

- (a) Creation of a commitment to permit cross-border provision of financial information and processing of financial data;
- (b) Agreement that in assessing capital requirements of WOSs or branches of banks assessed by their home country regulator to be compliant with Basel requirements, account shall be taken of parents' capital or guarantees;
- (c) Removal of priority sector lending obligations on locally incorporated EU-owned banks until all restrictions on their ability to establish a national branch network are removed or, failing that, expanding definition of Small Scale Industries to include Small & Medium-Size Enterprises (SMEs) and inclusion of "infrastructure" in definition of priority sector advances;
- (d) Removal of the discrimination in the rate of tax imposed on foreign banks compared with that imposed on domestic companies.

- (e) Commitment to remove discrimination under which public sector undertakings (PSUs) i.e. Government owned enterprises may only place deposits with local public sector banks;
- (f) Permission for EU banks to be allowed to raise Tier 2 capital in India (local currency subordinated debt) as permitted for local banks;
- (g) Removal of all restrictions on ability of banks to participate in exchange traded commodity products.

2) INSURANCE AND INSURANCE SERVICES

Specific Overall Objective: Removal of all barriers to market access and national treatment for providers of insurance and related insurance services.

The Indian market is very important for the European (re)insurance industry, with foreign insurance and insurance intermediaries having invested significantly in India's financial markets and contributed to the country's infrastructure development.

India currently maintains a foreign direct investment limit of 74%. The recent increase in the equity cap (increased from 49% in 2021) is welcomed by the insurance industry, and must of course be bound in the EU-India FTA. However, it was indicated that foreign control may only be permitted subject to certain safeguards, including the following:

- A majority of directors and key management personnel of the insurance company to be resident Indians
- At least 50% of directors on the board of the insurance company to be independent
- Not less than 50% of profits to be retained as general reserves.

Room for further growth remain and it is crucial that the EU-India FTA eliminates the existing barriers to trade and discriminatory measures in place in India. Effectively, the limit acts as a break on investment and serves to slow down the realisation of the full potential to provide Indian customers with professional advice on their insurance requirements and risk management needs.

Objectives

- (a) Further raise the level of permissible equity participation in the form of FDI by an EU joint-venture partner from 74%;
- (b) Remove the IRDAI guidelines implementing the Insurance Act that interpret the statutory definition of "ownership and control" of a jointly-held company as remaining with Indian residents or Indian companies.
- (c) Remove unnecessary restrictions on foreign investments (e.g. requirements for Indian citizens to be present in the corporate governance structure of foreign-controlled insurers)
- (d) Create a level playing field between Indian and European (re)insurers by completely removing any form of order of preference;
- (e) Remove restrictions on reinsurers' foreign branch offices (FRBs) in India, in particular with regards to the registration and operation of FRBs and allow the outsourcing/intragroup servicing arrangements of non-core functions to group entities;
- (f) Create parity on direct tax with local players by bringing the direct tax rate applicable to foreign reinsurance branches (circa 43%) into line with that applicable to local reinsurers (25%).

3) INVESTMENT & SECURITIES-DEALING SERVICES

Specific Overall Objective: Commitments by India to removal of all barriers to market access and national treatment, with additional commitments where necessary for this objective.

ESF Primary Objectives are:

- (a) Secure commitments to remove all quantitative restrictions on EU investment into India;
- (b) Secure commitments to remove restrictions of all kinds on EU non-banking financial companies (NBFCs), securities-dealing service-providers and securities advisory service-providers operating in India, and provide single-point clearance for authorisations to conduct business;
- (c) Secure commitments to remove restrictions on the purposes (including as security for debt financing) for which EU investors may use their Indian portfolio holdings;
- (d) Secure commitments to remove restrictions on Indian domiciled companies issuing shares in the EU and the trading of such shares in the EU;
- (e) Secure commitment to amend foreign ownership restrictions relating to Indian stock exchanges and connected organisations to allow full liberalisation of overseas ownership requirements.

Market Access:

- (a) Secure commitment that NBFCs and other institutions will enjoy the same freedoms to provide investment advisory services as the freedoms enjoyed by wealth management services provided by banks;
- (b) Permit securities firms or NBFCs that are regulated by the RBI to provide foreign exchange derivative products;
- (c) Ensure that there is a technical assessment of the risk of the business to be entered into by EU service providers;
- (d) Secure an agreed framework and timeline for removal of capital controls on EU service providers;
- (e) Permit local Indian retail partners to promote EU-regulated financial services products (particularly retail trading platforms) with localised regulatory approval;
- (f) In the case of EU service provision, secure commitment to allow capital to be held in a parent company rather than requiring it to be allocated to sub-companies for each investment-related or securities-related activity;
- (g) Secure commitment to allow EU service providers to operate in the India foreign exchange market without a banking licence;
- (h) Secure commitment that, as the India bond market develops, EU providers will be free to participate in it without restrictions;
- (i) Remove restriction in India's current GATS commitment stating that: "public sector enterprises can invest surplus funds in term deposits only with scheduled commercial banks incorporated in India";

- (j) Secure commitment to allow international standards of messaging (e.g. SWIFT) to be used for financial transactions for stocks and moneys by market intermediaries such as banks, brokers, custodians and exchanges.

H. TOURISM AND TRAVEL-RELATED SERVICES:

In its GATS Offer in 2008, India had removed foreign equity ceilings and scheduled “none” for Modes 1-3 in **travel agency and tour operator services**, as well as adding commitments on **tourist guides services**.

I. TRANSPORT SERVICES:

MARITIME TRANSPORT:

We note that India and the EU are already for several years, including a two-year gap, in negotiations concerning a Maritime transport agreement. Meanwhile it is appreciated that India’s continued commitment to free access to market and access to and use of port facilities on national treatment basis is welcomed and a de-facto, if not de-jure, reality already. Also in the field of establishment – mode 3 – there are no restrictions experienced. Pending the conclusion of the bilateral maritime transport agreement, the EU maritime transport industry insists that maritime articles in an EU-India FTA shall be no less than the maritime provisions negotiated in the EU-Korea FTA. Considering the geographical and trade conditions in India, there are some additional wishes, such as related to the relay or feederling if international cargoes and the positioning of equipment (empty containers) between Indian ports.

Particular attention to be given to the general note in the GATS offer and also raised in the bilateral maritime negotiations stating that all commitments are subject to domestic law and setting a requirement for incorporating as an Indian company; this makes no sense in negotiations that try to come to new more liberal terms for trade. A possible solution could be found in rephrasing into “applied in accordance with national laws, rules, regulations, notifications, guidelines, and existing bilateral agreements of the Contracting Parties with third countries”. A further concern is the preferential treatment for Indian Flag carriers for governmental cargoes. We would like therefore that the bilateral agreement between the EU and India, be it stand alone and/or in the context of the FTA on maritime transport shall include commitments along the following lines:

In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) The Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and nondiscriminatory basis; and
- (b) Each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships with regard to, *inter alia*, access to ports, use of infrastructure and auxiliary maritime services of the ports, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.
- (c) In applying these principles, the Parties shall: (a) not introduce cargo-sharing arrangements in future bilateral agreements with third parties concerning maritime transport services, including dry and liquid bulk and liner trade, and not activate such cargo-sharing arrangements in case they exist in previous bilateral agreements; and (b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and

other obstacles which could restrict free and fair competition or constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

- (d) Each Party shall permit international maritime service suppliers of the other Party to have an establishment in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third party, whichever are the better, in accordance with the conditions inscribed in its list of commitments.
- (e) Each Party shall make available to international maritime transport suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port:
- 1) Pilotage;
 - 2) Towing and tug assistance;
 - 3) Provisioning;
 - 4) Fueling and watering;
 - 5) Garbage collecting and ballast waste disposal;
 - 6) Port captain's services;
 - 7) Navigation aids; and
 - 8) shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

List of members supporting the above position

- Amfori
- Apple Europe
- 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
- 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