



EUROPEAN COMMISSION

Brussels, 10.11.2011
COM(2011) 724 final

2011/0328 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Russian Federation regarding the preservation of commitments on trade in services contained in the current EU-Russia Partnership and Co-operation Agreement

EXPLANATORY MEMORANDUM

Upon accession to the WTO, the Russian Federation will accede to the General Agreement on Trade in Services (GATS), thus undertaking comprehensive multilateral commitments relating to trade in services with all WTO Members. These commitments largely replicate or exceed their existing commitments regarding trade in services with the EU, which are defined in the current Partnership and Co-operation Agreement between the European Communities, and their Member States, of the one part, and the Russian Federation, of the other part, of 24 July 1994 (PCA). Nonetheless, there remain certain commitments, notably with regard to international maritime transport services and the temporary movement of natural persons for business purposes, where the Russian Federation has undertaken more substantial commitments through the existing PCA as compared to multilateral commitments upon WTO accession. In order to ensure that the existing market access commitments of the Russian Federation will not be made more restrictive for EU service suppliers than those currently in force, it has been agreed between the Parties that Russia would take an appropriate Most Favoured Nation (MFN) exemption from its GATS schedule and preserve these commitments exclusively with the EU.

The preservation of these commitments would take the form of a bilateral agreement, (hereinafter referred to as the "Agreement"), negotiated between the EU and the Government of the Russian Federation through an exchange of letters with the Russian Federation. The Agreement does not require the EU to undertake any commitments.

In order to ensure these commitments will continue to apply from the time that the Russian Federation accedes to the WTO, the Agreement should be applied provisionally from the date of such accession.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 91 and 100(2) and Article 207(4) first subparagraph, in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision XXX of [...] ¹, the Agreement in the form of an Exchange of Letters between the European Union and the Government of the Russian Federation regarding the preservation of commitments on trade in services contained in the current EU-Russia Partnership and Co-operation (hereinafter referred to as "the Agreement") was signed on [...], subject to their conclusion at a later date.
- (2) The Agreement was negotiated and signed in view of the economic importance for the European Union of the access of European service providers to the market of the Russian Federation.
- (3) The Agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement in the form of an Exchange of Letters between the European Union and the Government of the Russian Federation regarding the preservation of commitments on trade in services contained in the current EU-Russia Partnership and Co-operation is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

¹ OJ L [...], [...], p. [...]

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to make the notification provided for in the Agreement and in order to express the consent of the European Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council
The President

AGREEMENT

in the form of an exchange of letters between the European Union and the Government of the Russian Federation relating to the preservation of commitments on trade in services contained in the current EU-Russia Partnership and Co-operation Agreement (PCA)

Letter No 1

[Letter from the Government of the Russian Federation]

.....,

Sir,

Following negotiations between the European Union and the Government of the Russian Federation, with regard to trade in services, the two Parties have reached the following understanding:

I. Notwithstanding the provisions of Article 51 of the Agreement on Partnership and Co-operation Establishing a Partnership Between the European Communities and Their Member States, of One Part, and the Russian Federation, of the Other Part, of 24 June 1994 (hereinafter referred to as "PCA"), after the accession of the Russian Federation to the WTO, Articles 35 and paragraphs 1 and 2 of Article 39, in conjunction with Article 30 (h), of the PCA will continue to apply between the Parties.

II. Notwithstanding the provisions of Article 51 of the PCA, after the accession of the Russian Federation to the WTO, the Parties shall extend the benefits of their GATS commitments on intra-corporate transferees being transferred to commercial presences (as defined hereunder) other than representative offices in their respective territories to any person fulfilling the conditions set out in items (a) and (b) of paragraph 2 of Article 32 of the PCA. For the purpose of this article, the words "organizations" used in Article 32 of the PCA shall be deemed to cover the commercial presence as defined in the respective GATS schedules of the Parties.

III. 1. Intra-corporate transferees of Russian juridical persons being transferred to their representative offices in the European Union shall be accorded treatment no less favorable than that accorded by the European Union to like intra-corporate transferees of any juridical person of a third country.

III. 2. Treatment granted under other agreements than the PCA concluded by the European Union-with a third Party which are notified under Article V of the GATS or which benefit from the coverage of the EC GATS list of MFN exemptions shall be excluded from paragraph III.1. Treatment deriving from the harmonization of regulations based on agreements concluded by the European Union providing for mutual recognition in accordance with Article VII of the GATS, shall also be excluded from paragraph III.1.

III. 3. Treatment accorded by the Russian Federation to intra-corporate transferees of juridical persons of the European Union being transferred to their representative offices in the Russian Federation shall be no less favourable than that accorded to like intra-corporate transferees by the European Union in accordance with this

provision. The Russian Federation might however limit the number of such intra-corporate transferees to a maximum of five per representative office (two for banking).

IV. 1. For the purpose of paragraph IV:

- (a) A final consumer of a Party is a juridical person, established in accordance with the legislation of this Party on its territory.
- (b) A natural person is a citizen of a Party (in the case of the European Union, a citizen of one of its Member States) residing on the territory of this Party, who temporarily enters the other Party as an employee of the contractual service supplier with the purpose of provision of services, as provided by the contract to provide services.
- (c) A contractual service supplier is a juridical person of one Party established in accordance with the legislation of this Party on its territory which has no commercial presence in the form of subsidiary, dependent company or branch constituted in the territory of the other Party and which has concluded a contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of natural persons in that Party in order to fulfil the contract to provide services.

IV. 2. Treatment accorded by the European Union to contractual service suppliers of the Russian Federation shall be no less favorable than that accorded to contractual service suppliers of any third country.

IV. 3. Treatment granted under other agreements concluded by the European Union with a third Party which have been notified under Article V of the GATS or which benefit from the coverage of the EC GATS list of MFN exemptions shall be excluded from this provision. Treatment deriving from the harmonization of regulations based on agreements concluded by the European Union providing for mutual recognition in accordance with Article VII of the GATS, shall also be excluded from this provision.

IV. 4. The Russian Federation shall allow the supply of services into its territory by contractual service suppliers of the European Union through presence of natural persons subject to the following conditions:

- (a) The contract to provide services:
 - i. has been concluded directly between the contractual service supplier and the final consumer:
 - ii. requires the temporary presence on the territory of the Russian Federation of natural persons of the European Union to provide the service and
 - iii. complies with the laws, regulations and requirements of the Russian Federation.
- (b) The temporary entry and stay of natural persons within the Russian Federation pursuant to the fulfillment of this contract shall be for a period of not more than

six successive months in any twelve month period or for the duration of the contract, whichever is less.

- (c) The natural persons entering the Russian Federation must possess (i) a university degree or a technical qualification demonstrating knowledge of an equivalent level and (ii) professional qualifications where this is required to exercise an activity in the sector concerned pursuant to the law, regulations or requirements of the Russian Federation.
- (d) The natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during its stay in the Russian Federation.
- (e) The natural persons entering the Russian Federation must have been employed by the contractual service supplier for at least the year preceding the date of submission of an application for entry into the Russian Federation. In addition, the natural person must possess, at the date of submission of an application for entry into the Russian Federation, at least three years professional experience in the sector of activity which is the subject of the contract.
- (f) The contract to provide services has to be obtained in one of the following sectors of activity which are included and defined in Russia's GATS schedule of commitments:
 - 1. Legal services
 - 2. Accounting and bookkeeping services
 - 3. Taxation services
 - 4. Architectural services
 - 5. Engineering services
 - 6. Integrated Engineering services
 - 7. Urban planning and landscape architecture services
 - 8. Computer and related services
 - 9. Advertising services
 - 10. Market research services
 - 11. Management consulting services
 - 12. Services related to management consulting
 - 13. Technical testing and analysis services
 - 14. Advisory and consulting services incidental to mining
 - 15. Related scientific and technical consulting services

16. Translation and Interpretation services

17. Maintenance and repair of equipment, including transportation equipment

18. Environmental services

- (g) The subject of the contract shall not be “placement and supply services of personnel” as defined in CPC 872.

Access accorded under the provisions of paragraph IV.4 relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Russian Federation.

The Russian Federation might establish an annual quota of work permits reserved to European Union natural persons gaining access to the Russian services market under the provisions of paragraph IV.4. In the first year in which the provisions of paragraph IV.4 enter into force, this annual quota shall be no lower than 16000. In the following years, the annual quota shall be no lower than the quota of the preceding year.

- IV. 5. Upon entry into effect of the results of the current multilateral round of trade negotiations in the field of services, the Parties will review the provisions of paragraph IV.3 with a view to its extension to self-employed persons being contractual service suppliers.
- V. 1. This understanding shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis
- V. 2. This understanding shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of paragraphs II, III and IV.

In case the European Union confirms its agreement with the set forth in this letter, I propose that this letter and the reply letter of the European Union will establish the Agreement between the Government of the Russian Federation and the European Union relating to the preservation of commitments on trade in services contained in the PCA, and this Agreement shall enter into force on the date in which the Parties exchange written notifications certifying that they have completed their respective internal procedures. This Agreement shall be applied provisionally from the date of the Russian Federation’s accession to the World Trade Organization.

Please accept, Sir, the assurance of my highest consideration.

[On behalf of the Government of the Russian Federation]

Letter No 2

[Letter from the European Union]

.....,

Sir,

I have the honour to acknowledge receipt of your letter of today's date, worded as follows:

"Following negotiations between the European Union and the Government of the Russian Federation, with regard to trade in services, the two Parties have reached the following understanding:

I. Notwithstanding the provisions of Article 51 of the Agreement on Partnership and Co-operation Establishing a Partnership Between the European Communities and Their Member States, of One Part, and the Russian Federation, of the Other Part, of 24 June 1994 (hereinafter referred to as "PCA"), after the accession of the Russian Federation to the WTO, Articles 35 and paragraphs 1 and 2 of Article 39, in conjunction with Article 30 (h), of the PCA will continue to apply between the Parties.

II. Notwithstanding the provisions of Article 51 of the PCA, after the accession of the Russian Federation to the WTO, the Parties shall extend the benefits of their GATS commitments on intra-corporate transferees being transferred to commercial presences (as defined hereunder) other than representative offices in their respective territories to any person fulfilling the conditions set out in items (a) and (b) of paragraph 2 of Article 32 of the PCA. For the purpose of this article, the words "organizations" used in Article 32 of the PCA shall be deemed to cover the commercial presence as defined in the respective GATS schedules of the Parties.

III. 1. Intra-corporate transferees of Russian juridical persons being transferred to their representative offices in the European Union shall be accorded treatment no less favorable than that accorded by the European Union to like intra-corporate transferees of any juridical person of a third country.

III. 2. Treatment granted under other agreements than the PCA concluded by the European Union-with a third Party which are notified under Article V of the GATS or which benefit from the coverage of the EC GATS list of MFN exemptions shall be excluded from paragraph III.1. Treatment deriving from the harmonization of regulations based on agreements concluded by the European Union providing for mutual recognition in accordance with Article VII of the GATS, shall also be excluded from paragraph III.1.

III. 3. Treatment accorded by the Russian Federation to intra-corporate transferees of juridical persons of the European Union being transferred to their representative offices in the Russian Federation shall be no less favourable than that accorded to like intra-corporate transferees by the European Union in accordance with this provision. The Russian Federation might however limit the number of such intra-corporate transferees to a maximum of five per representative office (two for banking).

IV. 1. For the purpose of paragraph IV:

- (a) A final consumer of a Party is a juridical person, established in accordance with the legislation of this Party on its territory.
- (b) A natural person is a citizen of a Party (in the case of the European Union, a citizen of one of its Member States) residing on the territory of this Party, who temporarily enters the other Party as an employee of the contractual service supplier with the purpose of provision of services, as provided by the contract to provide services.
- (c) A contractual service supplier is a juridical person of one Party established in accordance with the legislation of this Party on its territory which has no commercial presence in the form of subsidiary, dependent company or branch constituted in the territory of the other Party and which has concluded a contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of natural persons in that Party in order to fulfil the contract to provide services.

IV. 2. Treatment accorded by the European Union to contractual service suppliers of the Russian Federation shall be no less favorable than that accorded to contractual service suppliers of any third country.

IV. 3. Treatment granted under other agreements concluded by the European Union with a third Party which have been notified under Article V of the GATS or which benefit from the coverage of the EC GATS list of MFN exemptions shall be excluded from this provision. Treatment deriving from the harmonization of regulations based on agreements concluded by the European Union providing for mutual recognition in accordance with Article VII of the GATS, shall also be excluded from this provision.

IV. 4. The Russian Federation shall allow the supply of services into its territory by contractual service suppliers of the European Union through presence of natural persons subject to the following conditions:

- (a) The contract to provide services:
 - i. has been concluded directly between the contractual service supplier and the final consumer:
 - ii. requires the temporary presence on the territory of the Russian Federation of natural persons of the European Union to provide the service and
 - iii. complies with the laws, regulations and requirements of the Russian Federation.
- (b) The temporary entry and stay of natural persons within the Russian Federation pursuant to the fulfillment of this contract shall be for a period of not more than six successive months in any twelve month period or for the duration of the contract, whichever is less.

- (c) The natural persons entering the Russian Federation must possess (i) a university degree or a technical qualification demonstrating knowledge of an equivalent level and (ii) professional qualifications where this is required to exercise an activity in the sector concerned pursuant to the law, regulations or requirements of the Russian Federation.
- (d) The natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during its stay in the Russian Federation.
- (e) The natural persons entering the Russian Federation must have been employed by the contractual service supplier for at least the year preceding the date of submission of an application for entry into the Russian Federation. In addition, the natural person must possess, at the date of submission of an application for entry into the Russian Federation, at least three years professional experience in the sector of activity which is the subject of the contract.
- (f) The contract to provide services has to be obtained in one of the following sectors of activity which are included and defined in Russia's GATS schedule of commitments:
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- V. 2. This understanding shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of paragraphs II, III and IV.

In case the European Union confirms its agreement with the set forth in this letter, I propose that this letter and the reply letter of the European Union will establish the Agreement between the Government of the Russian Federation and the European Union relating to the preservation of commitments on trade in services contained in the PCA, and this Agreement shall enter into force on the date in which the Parties exchange written notifications certifying that they have completed their respective internal procedures. This Agreement shall be applied provisionally from the date of the Russian Federation's accession to the World Trade Organization."

The European Union has the honour of confirming its agreement with the contents of this letter.

Please accept, Sir, the assurance of my highest consideration.

[On behalf of the European Union]