

CHAPTER 13
DOMESTIC REGULATION

Article 13.1

Scope and Definitions

1. This Chapter applies to measures of a Party relating to licensing requirements and procedures, qualification requirements and procedures and technical standards¹ that affect:
 - (a) the cross-border supply of services;
 - (b) the supply of a service or pursuit of any other economic activity through the establishment of an enterprise and operation of a covered investment;
 - (c) the supply of a service through temporary stay in their territory of categories of natural persons as defined in Article 12.1 (Scope and Definitions).
2. This Chapter only applies to sectors for which the Party has undertaken specific commitments under Chapter 10 (Investment Liberalisation), Chapter 11 (CBTS) and Chapter 12 (mode 4) and to the extent that these specific commitments apply.
3. Notwithstanding paragraph 2, this chapter shall not apply to licensing requirements and procedures, qualification requirements and procedures and technical standards relating to one of the following sectors or activities:
 - a) manufacture of basic chemicals and other chemical products;
 - b) manufacture of rubber products;
 - c) manufacture of plastics products;
 - c) manufacture of electric motors, generators and transformers;
 - d) manufacture of accumulators, primary cells and primary batteries; and
 - e) recycling of metal and non-metal waste and scrap.
4. This Chapter shall not apply to measures to the extent that they constitute limitations subject to scheduling under Articles 10.5 or CBTS 2 (Market Access) and/or Article 10.6 or CBTS 3 (National Treatment) or under Articles M4 2(c) and (d); M4 3(b) and (c) and M4 4 (3) and (4) [MA and NT for mode 4 categories].
5. For the purposes of this Chapter,
 - [(a) “licensing requirements” are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in

¹ For greater certainty, as far as measures relating to technical standards are concerned, this section applies only to such measures affecting trade in services.

order to obtain, amend or renew authorisation to carry out the activities as defined in paragraph 1 (a) to (c).

- (b) “licensing procedures” are administrative or procedural rules that a natural or a juridical person, seeking authorisation to carry out the activities as referred to in paragraph 1 (a) to (c), including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licencing requirements.
 - (c) “qualification requirements” are substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service.
 - (d) “qualification procedures” are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service.]
 - (e) “competent authority” is any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a decision concerning the authorisation to supply a service, including through establishment or concerning the authorisation to establish in an economic activity other than services;
 - (f) "authorisation" means the permission to carry out any of the activities referred to in points (a) to (c) of paragraph 1 resulting from a procedure to which an applicant must adhere in order to demonstrate compliance with licencing requirements, qualification requirements and technical standards;
6. The definitions in [Articles 10.1 and 11.3] apply to this Chapter.

Article 13.2

Conditions for Licensing and Qualification

1. Each Party shall ensure that measures relating to licencing requirements, licencing procedures, and qualification requirements and qualification procedures are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.
2. The criteria referred to in paragraph 1 shall be:
 - (a) clear;
 - (b) objective and transparent²; and

² For greater certainty, these criteria may include, *inter alia*, competence and the ability to supply a service or pursuit any other economic activity, including to do so in a manner consistent with a Party’s regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

- (c) accessible to the public and interested persons in advance.
3. When adopting technical standards, each Party shall encourage its competent authorities to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant international organizations³, designated to develop technical standards to use open and transparent processes.
 4. An authorisation or a licence shall, subject to availability, be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation or licence have been met.
 5. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.
 6. Subject to the provisions specified by paragraph 5, in establishing the rules for the selection procedure, each Party may take into account legitimate policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

Article 13.3

Licensing and Qualification Procedures

1. Licensing and qualification procedures and formalities shall be clear, made public in advance, and shall not in themselves constitute a restriction on the supply of a service or the pursuit of any other economic activity. Each Party shall endeavour to make such procedures and formalities as simple as possible and shall not unduly complicate or delay the provision of the service.
2. Where authorisation is required, each Party shall promptly publish or otherwise make publicly available the information necessary for the applicant to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, inter alia, where it exists:
 - (a) the requirements and procedures;
 - (b) contact information of relevant competent authorities;
 - (c) fees;
 - (d) technical standards;
 - (e) procedures for appeal or review of decisions concerning applications;
 - (f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses and qualifications;

³ The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of both Parties.

- (g) opportunities for public involvement, such as through hearings or comments;
or
 - (h) indicative timeframes for processing of an application.
3. Any authorisation fee⁴ which the applicants may incur should be reasonable, transparent, and not, in itself, restrict the supply of the relevant service or the pursuit of the relevant economic activity.
 4. Each Party shall ensure that the procedures used by, and the decisions of, the competent authority in the licensing or authorisation process are impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and not be accountable to any person supplying the services or carrying out the economic activities for which the licence or authorisation is required.
 5. In case specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. If possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.
 6. Each Party shall endeavour to establish the indicative timeframe for processing of an application and shall, at the request of the applicant and without undue delay, provide information concerning the status of the application. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe after the date of submission of a complete application.
 7. The competent authority shall, within a reasonable period of time after the receipt of an application which it considers incomplete, inform the applicant, identify, to the extent feasible, the additional information required to complete the application, and provide the applicant with the opportunity to correct deficiencies.
 8. The competent authority shall accept copies of documents that are authenticated in accordance with the Party's law, in place of original documents, unless the competent authority requires original documents to protect the integrity of the authorisation process.
 9. If an application is rejected by the competent authority, the applicant shall be informed, either at its own request or upon the competent authority's initiative, in writing and without undue delay. In principle, the applicant shall be informed of the reasons for rejection of the application and of the timeframe for an appeal against this decision. An applicant should be permitted, within reasonable time limits, to resubmit an application.
 10. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

⁴ Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

11. Where examinations are required for an authorisation, the competent authority shall ensure such examinations at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination.

Article 13.4

Review

If the results of the negotiations related to Article VI(4) of the GATS enter into force, the Parties shall jointly review such results. Where the joint review assesses that the incorporation of such results into this Agreement would improve the disciplines contained herein, the Parties shall jointly determine whether to incorporate such results into this Agreement.

[EU: SECTION B

PROVISIONS OF GENERAL APPLICATION]

Article X.9 bis

Administration of measures of general application

Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

Article X.9 ter

Appeal of administrative decisions

Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected investor or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.