23/04/2012

ESF Contribution to Public Consultation on EU-US High Level Working Group on Jobs and Growth

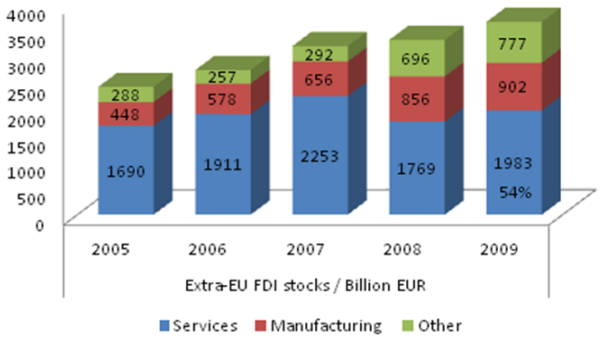
The European Services Forum (ESF) is a network of representatives from the European services sector committed to actively promoting the liberalisation of international trade in services and investment. ESF's main fields of activity are the WTO services negotiations and the EU's bilateral trade negotiations on services and investment.

A. Priorities

- ESF supports a deep and comprehensive free trade agreement with the US where all negotiations are conducted in a single package.
- ESF supports significantly deepening economic and trade integration.
- ESF supports setting ambitious and clear timelines for negotiations with a clear structure to proceedings.
- ESF supports incorporating the work of the Transatlantic Economic Council (TEC) into the negotiations and building stronger regulatory cooperation, including in the various services sectors where deemed appropriate.

B. Services Trade and Investment between the EU and US

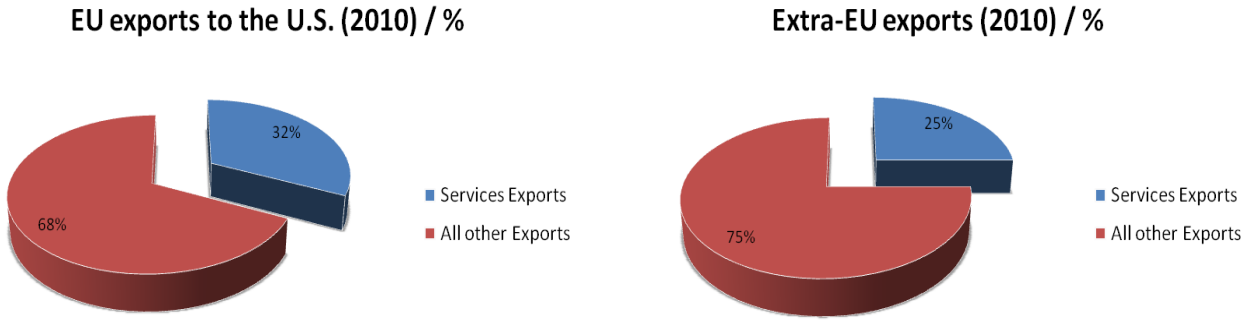
The US accounted for 23.9% of all extra-EU services exports in 2010 and 30% of extra-EU investment stocks in 2009. In 2009, 54% of Extra-EU FDI stocks were invested into services.



Such high figures demonstrate the importance of the US market to European services companies. Furthermore, the EU accounts for 36% of all US services exports, demonstrating the importance of services in any future trade negotiations on both sides of the Atlantic.

The transatlantic relationship is also noteworthy when taking consideration of the composition of EU exports. By comparing EU exports to the US, with EU exports to the world (total extra-EU exports), it is clear that services exports are a larger proportion of overall exports in the former than in the latter. The charts below demonstrate this situation:

• Avenue de Cortenbergh, 168 • B – 1000 - Brussels • Belgium • TVA BE 863.418.279
Email: esf@esf.be • Tel : +32-2-230 75 14 • Fax : +32-2-230 61 68 • www.esf.be



Source: Eurostat

This data demonstrates the importance of the US market to EU service suppliers and the importance of services trade to the transatlantic economic relationship. ESF calls upon the Commission to ensure that this importance is reflected in the objectives of the EU's negotiators.

The work of High Level Working Group on Jobs and Growth, established at the last EU-US Summit on 28 November 2011, is clearly of great importance to the European services sector. Our primary interest is how this initiative can further strengthen the transatlantic relationship and subsequently generate new, and less expensive, market opportunities for European services companies. We believe this can be achieved by covering the following:

1. Remove existing market access barriers
2. Bind current applied levels of openness and regulation (i.e. removing the "water")
3. Reduce negative impacts of US internal market fragmentation
4. Set horizontal regulatory disciplines
5. Set sector specific regulatory disciplines
6. Agree mutual recognition of qualifications
7. Increase access to US public procurement for services sectors
8. Strengthen investment protection

C. Barriers

There are indications that traditional market access barriers, while not absent, are less numerous in transatlantic trade. It is clear however, that many of the barriers facing European companies are embedded within US domestic market regulation and / or divergence of regulation with the EU. Vice versa, many of the barriers facing US companies are embedded within the level of development of the EU's internal domestic market and/or divergence of regulations with the US. Working to resolve such barriers could have a significant positive impact on trade, growth and jobs, and fully deserves to be a priority for the Commission. One example of the potential effects is found in a study[1] estimating that 20% of the total production of services in the US and the EU are actually restricted by regulation which prevents transatlantic trade in services. Removing these barriers, it is estimated, could boost services trade by 10-20% or US$20-40 billion. Such activity could have a significant impact on employment, equivalent to an estimated 170,000 - 350,000 jobs for the Transatlantic Economy.

ESF believes it is very important for the Commission to quantitatively assess potential gains from removing these barriers to services trade, both horizontal and sector specific. Currently there is insufficient analysis in this respect and ESF supports the Commission carrying out such an assessment as a key foundation of the agenda of the HLWG or other pre-negotiation exercise.

Such a thorough assessment and analysis would be a first step that would provide the necessary information to base decisions on how European services exports to the US can be most effectively

[1] *Patrick Messerlin - Sciences Po Paris - "Leading with services". The dynamics of transatlantic negotiations in services - 2012*

liberalised. Building upon this, a next step would be to agree on the best method for producing results from regulatory cooperation. As such this must also be a feature of the HLWG or an additional exercise. All stakeholders (businesses, negotiators and regulators at all levels) should be involved in this process in order for it to be successful.

Services are highly sensitive to regulatory barriers and it is important to note that regulatory cooperation in services is not covered in the TEC. The High Level Regulatory Cooperation Forum (HLRCF), which reports to the TEC, has initiated a large number of regulatory dialogues in many goods sectors dealing with certification, standardisation and accreditation procedures (food and sanitary measures, pharmaceutical, etc.). While there exists a "Financial Services Regulatory Dialogue" led by DG Markt and the US Treasury, which brings together financial services regulatory authorities and central banks, it is not within the ambit of the TEC. Furthermore, these dialogues are not producing, so far, binding results. They create only autonomous voluntary commitments. ESF supports negotiations in services sectors that initiate far reaching regulatory dialogues with a timeframe and mechanism for including results into binding commitments.

D. Form of Agreement

ESF supports a comprehensive approach to negotiations and resultant agreement. Such an agreement would include all aspects included in a Deep and Comprehensive Free Trade Agreement including the following elements:

1. Trade in goods, eliminating all industrial tariffs as well as non-tariffs barriers
2. Trade in services
3. Protection of investment
4. Trade and public procurement
5. Protection of Intellectual Property
6. Regulatory cooperation building on the TEC
7. Additionally, due to the importance of such an agreement, both in trade volumes and in political terms, it would be sensible to explore the possibility of creating a chapter on relations with third countries, with the aim of allowing – and fostering – other trade partners to join the EU-US deal in the future

ESF believes that this approach would tie the substantial political will required for a transatlantic agreement into one negotiation rather than multiple, parallel or otherwise, negotiations on different aspects of the commercial relationship. Such an approach would create the scope for bargaining certain sectors for other sectors (i.e. the EU could make concessions in non-services sectors for openings in offensive interests in services sectors). This dynamic between the various sets of negotiations would not exist if the individual negotiations are isolated.

While ESF sees some potential advantages of approaching the agreement with separate negotiations, there is a risk that such an approach would result in less ambitious commitments due to the inability to make trade-offs across different sectors. A further drawback to this approach is that it may be harder to promote politically on both sides as it could require continual political compromise on difficult issues and create more pressure during ratification. It could also draw attention away from key services targets in public procurement. Finally, it is unclear how this would impact on services sectors that have close links to and vested interests in certain manufactured goods, for example in the health sector or environmental services sector where products can be linked to licenses.

ESF acknowledges concerns with regard to the idea of a single undertaking approach and the potential for difficult issues in one sector to block progress in other sectors (i.e. potential for services to be held up by difficulties in some manufacturing products or in agriculture, for example). As such, ESF supports an ability within the negotiations to defer specific, blocked issues, to a later

stage. Furthermore, ESF is mindful that the nature of the results of an extensive assessment by the commission should be a big factor in the overall approach to structuring negotiations.

ESF supports a negative list approach that should be used in any approaches to the services negotiations. The EU and its Member States have conducted the necessary groundwork for the negative list approach for the CETA with Canada. This groundwork should be utilised and applied in negotiations with the US, which will also favour a negative list approach, and which is a highly developed economy. The private sector generally sees a negative list approach as having a greater liberalising effect as well as a greater facility to future proof commitments. The ability to future proof commitments is important as it prevents barriers from re-emerging with changes in technology, for example. A negative list can also create schedules which are easier to understand and to process for companies.

E. Contents of Agreement

Clearly there is already significant integration between the economies of the US and EU. In order to strengthen the transatlantic commercial relationship further through an FTA will therefore require deep and comprehensive coverage. ESF supports including the following as part of any agreement:

1. Increasing market access by **removing existing barriers** that are still present in many services sectors, notably equity caps in **airlines**, in some **telecommunication** services.

2. Increasing legal certainty in other services sectors by **binding the current practice of openness and regulation** (i.e. removing the "water" between on one hand what was bound fifteen years ago by the US in the Uruguay Round and on the other hand the autonomous or bilateral and regional liberalisation undertaken by the US since).

3. Reducing the negative **impacts of fragmentation** of the US internal market resulting from **regulations** in services sectors being designed and implemented **by individual US states**. The same shall apply in Europe, regarding the **fragmented national regulatory schemes from Member States**.

4. Adopting an ambitious **set of horizontal regulatory disciplines** that should pave the way towards transparency, prior consultation, early alert mechanism, right of appeal, disciplines for state owned enterprises (SOEs) and disciplines on cross border data flows. There should also be commitments for reduced administrative burden in mode 4.

5. Adopting ambitious **sets of sector specific disciplines** including ICT services in the wake of the 2011 EU-US trade principles, Understanding in financial services, disciplines in accounting, adoption of a legal framework for **mutual recognition agreements (MRAs)** for qualifications for **professional services, etc**.

6. Committing to pursue the work of the High Level Regulatory Cooperation Forum (HLRCF) and similar mechanisms, such as the EU-US Financial Markets Regulatory Dialogue for financial services, to **improve coordination between regulatory authorities**. The agreement should stimulate regulatory agencies at all levels to step up cooperation **to produce regulatory understanding.**

7. **Opening access to public procurement for services sectors**. Public procurement is not only for goods, but also very much for services. Many sectors do participate in public procurement contracts; including construction and related services (architecture, engineering, urban planning, etc.), ICT services, environmental services (water, waste, etc.), energy services, catering services, cleaning services, business services (also often related to maintenance contracts of goods/machinery, etc.), auditing and accounting, transport and logistics services other than aviation (where "Fly America" prevents non-US

citizens to have access to public procurement), etc… However, while European companies are indeed active on some of these markets, the US public procurement market remains relatively closed both at a committed level (i.e. GPA in terms of coverage {only 37 US states are committed} and of thresholds {lower that the EU in many instances} and applied level). EU service providers not only want greater access but greater security from protectionist swings. This should include enabling market access and regulation in the Green Economy which has a cross-cutting theme.

8. **Committing to secure cross border data flows**; crucial to the modern interconnected global economy. The regulators of the EU and US must continue to work together to improve and to harmonize Data Protection legislations. Over half of EU services trade, as well as a large portion of goods trade, depends on the internet and cross-border data transfers. Undermining such connectivity through the implementation of diverging or impractical approaches to data handling, protection and localisation must be avoided. There is therefore an urgent need for cooperation between the data protection/data security regulators from both sides of the Atlantic. ESF calls on the High Level Working Group to take up this issue as a priority in their work.

9. **Committing to strong investment protection** with commitment to respect the already agreed high level principles and rules for transatlantic investments, with a state-of-the-art in investor-to-state dispute settlement mechanism that includes a clear and well defined time frame for arbitration.

10. **Improving the administration of movement of qualified persons**. This could be achieved by making treaty trader and investor status fully available, taking major steps to reduced administrative burden and facilitate intra-corporate transfers, implement a mechanism similar to the APEC Card for business visitors (expediting their entry), and extending the US Visa Waiver Program to cover the EU.

11. **Adopting mutual recognition of transportation security requirements**. ESF calls to accelerate the reduction or removal of duplications and redundancies between the EU and US security regimes by embracing a risk-based approach to mutual recognition. ESF commends the efforts by the US and the EU to establish mutual recognition of the existing trade partnership programs: US Customs-Trade Partnership Against Terrorism (C-TPAT) and EU Authorized Economic Operator (AEO). ESF strongly supports the goal of recognizing and eventually harmonizing both security regimes, in particular the US should recognize the EU air cargo security regime. In addition, as new security programs and initiatives are developed, greater effort is needed to harmonize standards to prevent future divergence, for example in the area of pre-lading information for air cargo.

12. **Increasing "de minimis" customs values and eliminating the US formal entry list.** A higher "de minimis" value threshold for the imposition of duties and customs requirements will facilitate trade. Currently, the EU de minimis value is significantly below that of the US which is considering raising the threshold further. A high 'de-minimis' value will reduce regulatory and financial burdens for shippers, particularly SMEs, and benefit the economy as a whole in both markets. In addition, even with "de minimis" designed to reduce requirements for imported goods, the US maintains a list of goods under the Harmonized Fact Sheet 30, which requires formal customs entry even below "de minimis". Trade would benefit from this list to be abolished.

13. **Enhancing the fight against Intellectual Property Rights (IPR) infringements by enforcement bodies.** ESF fully supports the need to enforce the protection of intellectual property rights. The enforcement bodies, like the customs authorities, should be recognized as the only real experts having the right expertise and experience to identify goods infringing IPR rules.

F. Sector Specific

ESF members will continue to - and will have already done so - send sector specific information directly to the Commission's services. The information below is therefore not exhaustive. Important sector specific services information not present in this contribution may have been, or will be, sent directly.

1. Legal Services

The key issue relate to the fact that each US state is a separate jurisdiction and as such has its own regulations where foreign lawyers are concerned. Further, there is no national body that is vested with the power to address such issues for lawyers nationally or internationally.

Specifically:

- Requalification: the rules for solicitor eligibility to take the bar exam vary widely between states. As an example, in the state of New York, solicitors who qualified without a law degree must take an LLM at an ABA-approved law school in the US in order to be eligible to take the bar exam as their legal education is considered deficient. This is a long standing issue and the Court of Appeals (the rule making body) in fact amended the rules during the summer of 2011 which made it even harder for these solicitors. All solicitors should be eligible to take the bar exam regardless of their route to qualification. Other states, such as Illinois, impose a minimum practice requirement (5 out of the last 7 years) and some allow access on the basis of the solicitor qualification regardless of route/experience, such as California.
- Foreign lawyers can practice in 31 states as a 'foreign legal consultant' which permits the practice of their home law with some restrictions. There are some complaints that the application procedure is often overly bureaucratic but other than that, it works quite well.
- Temporary practice as a FLC: only 6 states have this rule to permit foreign lawyers 'temporary and limited services in the United States'. We strongly encourage wider adoption beyond the six states.
- Practice as in-house lawyer: 6 states have rules for foreign lawyers practicing as in-house counsel.
- Setting up a firm: Alternative Business Structures (ABS) (being implemented in the UK) may have issues with local compliance as ABSs are not allowed in the US with the exception of DC where limited non-lawyer ownership is permitted.

2. Engineering Services

I. Remove existing US market access barriers

a. Local requirements:

Suggestion: To avoid requirements related to local experience/ownership

We have found market access barriers related to local experience requirements. For instance, the Request for Qualifications in Design or Design & Build procurement processes sometimes require the proposer team "to have completed similar projects in the USA or in the State of X.."

On some occasions we have seen local preference clauses giving preference to firms for which a certain percentage of the owners are residents of a specific location. Or to firms that have been having a local office in a specific location for a certain period of time.

b. Joint Experience requirement

Suggestion: To limit joint-experience requirements to cases in which it provides real value and to avoid requirements related to local joint-experience.

In the Qualifications Evaluation Criteria for Design and Design & Build procurement processes, we have found a preference for proposers that provide experience working together in similar projects. Sometimes this preference is combined to local experience requirements. As a result very often the same teams are shortlisted over and over. This is often a barrier for EU teams or for combined US-EU teams to access the market.

II. Agree mutual recognition of qualifications

a. Professional Engineer requirements

Suggestion: In order to generate new market opportunities for European Engineering firms in the USA, the process to agree mutual recognition of qualifications should be simplified.

In some jurisdictions only registered or licensed engineers (often called Professional Engineers of PEs) are permitted to use the title engineer or to practice engineering. Another earmark that distinguishes a licensed engineer is the authority to take legal responsibility for engineering work. Only a licensed engineer can sign, seal or stamp technical documentation such as reports, drawings, and calculations for a study, estimate, valuation; design; analysis and execute/supervise imp. engineering works. Only he/she can approve tenders/bids/contracts/bills/payments/valuations and do engineering valuation of buildings structures; machines; plant; factory; process; components; land property. We have found burdensome processes to register of license experienced European Engineers in the US. These processes are often market access barriers.

b. Consultants Pre-qualifications

Suggestion: To avoid the requirements related to local experience in consultant's pre-qualification processes.

Competitive selection of professional services consultants is often based on pre-qualifications. Consultants are only allowed to compete in areas for which they have been previously qualified by Public Agencies.

c. General and Professional Liabilities Insurances

Suggestion: To avoid discriminatory practices related to Insurances.

European firms very often find difficulties to extend their General and Professional Liabilities coverage to the United States.

3. Postal and Courier

Ensure EU operators have the same level of market access to the US market as US operators have access to the EU market. There is currently an imbalance in market access in the postal and courier sector. For example in the area of express where US cargo carriers can freely operate in

the EU domestic market and EU cargo carriers are denied access to the US domestic market. This means that US air express providers can achieve economies of scale which are not accessible to EU service providers. Therefore, air cargo (indispensible for express) needs to be liberalized. Another example of the imbalance is the monopoly in the US whereas the EU market is liberalized.

4. Electronic Communications Services

Both the US and the EU Administrations have acknowledged the importance of the electronic communications services sector and have taken action to develop their respective markets. However, while pursuing common goals such as the need to stimulate broadband deployment and adoption, the EU and US have designed their own regulatory frameworks for the sector, sometimes with diverging approaches and results.

Innovative and affordable electronic communications services are a key enabler of the modern economy. The HLWG on Jobs and Growth, and any subsequent FTA negotiations, should be seen as an opportunity for cooperation, common understanding and identification of best regulatory practices, to address regulatory barriers to information and communication technology services and to build upon and expand the trade-related principles for such services that both parties agreed upon in 2011.

There are a number of issues that are fundamental for the electronic communications sector, not only for transatlantic business but also in relation to third countries.

- Economic Sustainability of the Internet: promoting a new Internet model based on commercial flexibility, with new approaches to internet interconnection, allowing differentiated offers at the retail level and at the wholesale level, inter-alia through end-to-end guaranteed Quality of Service and managed services in access networks.

- Network deployment issues: incentives for private investment in next generation access networks, role of the public sector, radio spectrum policies.

- ICT services competition: there needs to be an appropriate and agreed regulatory framework to ensure full and open competition in ICT services, including a close regulatory analysis of wholesale and special access regimes. It will be important to ensure a level playing field for EU and US ICT companies competing for transatlantic, regional or global contracts.

- Definition of telecoms: The US and the EU should agree on a common definition of electronic communications services.

- Spectrum: The US should find more spectrum for commercial mobile broadband and, to the extent possible, harmonize its spectrum rulings to allow the greatest efficiencies for next generation telecommunications.

- Internationally: the HLWG should promote deeper EU-US cooperation to explore new multilateral and plurilateral options towards a 21st Century ICT goods and services agreement.

Given the importance and pervasiveness of electronic communications for the global economy as a whole, most of these topics need to be addressed now or in the short term so as to allow the rapid development of an Internet ecosystem that can be instrumental in rising to the challenges of innovation, growth and jobs in a global economy.

5. Satellite Operators

The remaining barriers related to satellite operations are mostly of a national regulatory nature. It is important that streamlined licensing be sought to secure market access in the US. EU and US governments should also seek to ensure that the availability and use of spectrum is managed in accordance with applicable International Telecommunication Union Radio Regulations (ITU-RR).

6. Financial Services

I. Insurance

a. Market Access - Discriminatory practices/proposals:

US Reinsurance Collateral - The NAIC's adoption of a revised credit for reinsurance model law and regulation in early November 2011 has been a step in the right direction but is flawed. For example, it requires: burdensome financial reporting, including reconciliation of financial statements to US GAAP and mandated use of US specific forms for reporting of certain data; A-rated certified reinsurers must lodge collateral at 50% (instead of the 20%); and, it only provides collateral relief on a prospective basis. However, important additional work is needed most immediately with respect to the retroactive application of the benefits and the burden associated with the financial reporting. It is important that momentum for reform is not lost and the ultimate goal of equal treatment for both non-US and US reinsurers with uniform implementation across the US is not forgotten. Meaningful engagement by the Federal Insurance Office (FIO) in these discussions is important, not least because the pre-emption powers of the FIO provide a potential avenue through which uniform reform could be achieved.

US affiliated tax proposals – A proposal to limit the deductibility of reinsurance premiums to non US-affiliates was included in Obama's 2013 budget proposal released on February 13th 2012. This proposal is similar to the companion Bills which were introduced into the US House of Representatives and the US Senate in October 2011 which would limit the tax deductibility of certain affiliated reinsurance transactions. These proposals would result in unequal treatment of European insurers whose affiliate transactions would effectively become subject to double taxation. It would also potentially place the US in violation of its General Agreement on Trade in Services (GATS) agreements under the World Trade Organisation (WTO) and is at odds with the non-discrimination provisions of income tax treaties between the US and certain member states.

b. Market Access - Extra-territorial application of US law:

Over the last few years, legislation has been passed by US Congress which directly affects the business of some European insurers' which do not even write business in the US:

Foreign Accounts Tax Compliance Act (FATCA) –FATCA is intended to reduce tax evasion by US taxpayers with financial accounts at Foreign Financial Institutions (FFI). Entities classified as FFIs need to report identification and personal data to the US Internal Revenue Service (IRS) or be subject to a 30% withholding tax on US source payments. European insurers have both a low incidence of US policyholders and present a low risk of tax evasion. However, compliance will create a significant burden and potentially leave European insurers in breach of EU data protection legislation.

Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) – US law mandates that CMS (US Centres for Medicare and Medicaid Services) bear secondary liability for the claims of Medicare beneficiaries. To achieve this, liability insurers, including foreign insurers qualifying under "doing business in the US" criteria are required to collect and report identification and personal data to CMS on US claimants. Due to the broad definition of "doing business in the US", this

legislation creates a significant reporting/compliance burden for European insurers and may place European insurers in breach of EU data protection legislation.

In both cases a significant amount of discretion is left to the US authority responsible for implementing the legislation. Therefore, it is important for the Commission to speak now with their US counterparts to ensure that the concerns of the European insurance industry are heard.

c. Market Access - Difficulties arising from dealing with multiple regulatory jurisdictions:

For international insurers doing business in a number of US states, differences in state-based regulatory requirements significantly add to the cost of doing business which in turn increases the price of insurance coverage for consumers. In particular, greater uniformity in state insurance regulation with respect to US reinsurance collateral requirements and also the regulation and taxation of placements by surplus line insurers is required. In regard to the surplus lines market, some state insurance laws provide explicit exemptions for surplus lines insurers. However, the vast majority of insurance laws and regulations are silent with respect to their applicability to surplus lines insurers. As a matter of policy, state insurance departments often exempt surplus lines insurers from regulatory requirements designed to protect unsophisticated policyholders.

Therefore, it is often very unclear which laws and regulations apply to surplus lines insurers. This difficulty is frequently compounded by changes in insurance department staff which often result in different interpretations of the applicability of laws and regulations. In recent years, surplus lines insurers have seen state insurance regulators attempting to apply a variety of restrictions designed for the admitted market such as deductible limits, detailed disclosure requirements and mandatory contract terms to surplus lines insurers, even though these requirements were never intended to apply to the surplus lines market.

d. Regulatory Issues:

Systemic risk regulation – the US through its newly formed Financial Stability Oversight Council (FSOC) has been moving quickly in defining which 'non-bank financial institutions' present a systemic risk to the US. In addition, the US Federal Reserve is currently consulting on a proposal to implement standards and early remediation requirements for large banks and those companies designated by the FSOC as systemically risky. In order to ensure global convergence is achieved it is very important the international debate is first finalised before implementation at the national level commences. Additionally, where robust group supervision is in place, the group-wide supervisor should assess whether an insurance group is of systemic significance. As such, we think that it should not be possible for a company operating globally to be designated as a systemically important financial institution (SIFI) in a foreign jurisdiction but not in its domiciliary jurisdiction.

Regulatory understanding - In working towards achievement of mutual recognition, the focus should be on equivalence of outcome not on methodologies. With the implementation of the Solvency II Directive more work is urgently needed on i) establishing an effective group supervision regime in the US which takes into account the economic reality of the group and ii) equivalence of solvency regulation for insurers.

Data confidentiality – The ability for regulators to share confidential information securely is a pre-requisite for better supervisory cooperation and coordination. The work on-going on international supervisory colleges underlines the necessity for progress to be made in this area to facilitate supervisors working together internationally.

FIO role - The establishment of the Federal Insurance Office (FIO) and the ability it gives the US to 'speak with one voice' internationally is welcomed. In particular, it is essential that the FIO participates in the EU-US regulatory discussions as well as other relevant fora. Among others

areas, FIO could play an important role in the Solvency II equivalence discussions, G-SIFI debate, US reinsurance collateral reform and IAIS Common Framework for supervision of internationally active groups.

II. Banking and asset management services

(i) **Policy cooperation framework -** Financial market policy cooperation between the US and the EU has been covered separately by the US-EU Financial Markets Regulatory Dialogue (FMRD) which has been in operation since 2004 and, compared with other policy areas, very successful. This dialogue has been strongly supported in the past and, given the specificities of the political agenda on financial services, considers a continuation of the FMRD as the sole locus of negotiations a vital precondition for success in this field.

(ii) **Market access -** Traditional issues of market access in terms of trade and investment barriers or behind-the-border discriminatory treatment do not play a significant role in EU-US banking and securities markets. Most efforts in these fields are related to regulatory frameworks that are coherent in substance and non-discriminatory in nature. It would be beneficial to consider agreeing on a barrier-free, non-discriminatory transatlantic (EU-US) market in financial services as a principle, on a standstill and roll-back of remaining barriers to market access within a specified period, and on broader cross-cutting issues. For example, it might be conceivable that the idea of establishing an EU-US dispute settlement mechanism might come up and be pursued.

7. Transport

For modes other than aviation, binding the current practice of openness. For aviation, introduce a level-playing field by allowing EU carriers access to the US domestic market in the same way as US carriers have access to the EU domestic market. In addition, airline ownership and control should be liberalised.

* * *

For other sectors, detailed information will follow as the discussion progresses. The binding of the current practice of openness decided through bilateral, regional or autonomous regulation should be systematically required as a basis for the negotiations. Sub-federal level discussions to improve the regulatory environment across states should also be systematically required. As mentioned in the Horizontal section above, for the professional services, it would be important to engage possible negotiations of mutual recognition of qualification and diplomas when deemed appropriate.

It should be expected that further detailed sector specific information will follow from all services sectors.

* * *

LIST OF ESF MEMBERS SUPPORTING THE ABOVE POSITION

1. Architects' Council of Europe –ACE
2. BDO
3. British Telecom Plc
4. Bundesverband der Freien Berufe – BFB
5. Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
6. BUSINESSEUROPE
7. BUSINESSEUROPE WTO Working Group
8. Commerzbank AG
9. Deutsche Bank AG
10. Deutsche Telekom AG
11. Deutsche Post DHL
12. DI – Confederation of Danish Industries
13. EK - Confederation of Finnish Industries
14. Ernst & Young
15. EuroCommerce
16. European Association of Cooperative Banks – EACB
17. European Banking Federation – FBE
18. European Community Shipowners' Associations – ECSA
19. European Express Association – EEA
20. European Federation of Engineering and Consultancy Associations – EFCA
21. European Public Telecom Network – ETNO
22. European Savings Banks Group – ESBG
23. European Satellite Operators Association - ESOA
24. Fédération des Experts Comptables Européens – FEE
25. Fédération de l'Industrie Européenne de la Construction – FIEC
26. Foreign Trade Association - FTA
27. France Telecom
28. Goldman Sachs International
29. IBM Europe, Middle East & Africa
30. Insurance Europe
31. Irish Business and Employers Confederation
32. KPMG
33. Law Society of England & Wales
34. Lloyd's of London
35. Mouvement des entreprises de France – MEDEF
36. Oracle Europe, Middle East & Africa
37. Siemens AG.
38. Standard Chartered Bank
39. Svenskt Näringsliv (Confederation of Swedish Enterprise)
40. Telefónica SA
41. Telenor Group
42. The CityUK
43. Thomson-Reuters
44. Trägerverein Zenit e.V
45. TUI A.G.
46. Veolia Environnement
47. Visa Inc.
48. Vodafone
49. Zurich Financial Services