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Negotiation Trade in Services with the EC: Analysis of Options and Opportunities for African Countries

Background Brief No. 16

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This study was prepared as part of a broader project on trade in services implemented by ILEAP. It was drafted under the coordination of Dr. Dominique Njinkeu (Executive Director, ILEAP) and has greatly benefited from the insight of several advisers ILEAP. The opinions expressed in this publication should never be attributed to ILEAP, or its Board or its funders, and even less to the institutions with which our senior advisers are associated. Comments can be sent to the secretariat of ILEAP to: (ileap@ileap-jeicp.org)

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LIST OF ABBREVIATIONS

EC MEMBER STATES

AT	Austria
BE	Belgium
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	The Netherlands
PL	Poland
PT	Portugal
SE	Sweden
SI	Slovenia
SK	Slovak Republic
UK	United Kingdom

Other Abbreviations and Acronyms

BV	Business Visitor
CSS	Contractual Service Supplier
EC	European Community
EPA	Economic Partnership Agreement
EU	European Union
ENT	Economic Needs Test
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
ICT	Intra-Corporate Transferee
IP	Independent Professional
MFN	Most Favoured Nation
MR	Mutual Recognition
MRA	Mutual Recognition Agreement
NT	National Treatment
SME	Small and Medium Enterprises
WTO	World Trade Organization

INTRODUCTION

African countries are engaged in fairly intensive negotiations with the European Union (EU) for concluding comprehensive Economic Partnership Agreements (EPAs). Trade in Services is one of the key focus areas of the EPAs. ILEAP is assisting a number of these African groups to prepare for the negotiations on services in the EPA, and in particular to prepare offers and requests for the negotiations. In this regard, a number of specific sectors of interest have been identified as of significant interest for some groupings. They include information communication technologies (ICT) and IT-enabled services, Tourism and Travel, Financial Services, Health Services and Transport Services.

As African countries prepare themselves for the services negotiations with the EU, an important precedent that needs to be studied is the EPA recently concluded by the EU with 13 Cariforum countries (hereinafter the 'Cariforum EPA')¹. The Cariforum EPA is aimed at being comprehensive trade and development agreement covers trade in goods and services, investment, as well as a wide range of trade-related areas. It also has substantive provisions relating to sustainable development, development cooperation and regional integration.

The EU is likely to use the Cariforum EPA as the basis for EPAs with other African groups as well. In general, the substantive opening up of service sectors by the EU under the Cariforum EPA, especially in relation to sectors of interest to the Cariforum countries, has been commended by analysts and commentators.² Studies have also analysed and concluded that EU's commitments under the Cariforum EPA are substantial improvements over and above their GATS Schedule of Commitments.³ This paper seeks to ask and analyse two additional questions: (a) what are the challenges in negotiating services with the EU, given that the EU does not as yet have a harmonized internal market for services; and (b) how does EC's Cariforum Schedule compare with EU's Revised Offer at the GATS.

The rationale for asking these questions is as follows: The market for services remains fragmented in respect of most service sectors within the EU; which essentially means that negotiating a EPA with the EU is almost akin to negotiating with 27 different trading partners, and not with EU as a whole. A few steps have been taken towards internal harmonization in certain service sectors within the EU. The steps towards internal harmonization however, have so far been confined to providing ease of access for EU nationals and EU service providers only. For example, doctors who are UK nationals may be able to take advantage of EU's new Mutual Recognition Directive and practice in, say Italy or Spain. However a Senegalese national or an Indian national qualified as a doctor in the UK cannot take the benefits of the EU directive on mutual recognition for doctors. Nevertheless,

¹ The European Union signed an Economic Partnership Agreement with 13 CARIFORUM countries in October 2008: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, the Dominican Republic, Grenada, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Christopher and Nevis, Suriname, Trinidad and Tobago, and Guyana. The Agreement is provisionally applied as of 29 December 2008.

² See for example, GTZ Working Paper, "Cariforum EPA and beyond: Recommendations for negotiations on Services and Trade related Issues in EPAs", 2008; Anthony Peter Gonzales, "Cariforum's Decision to sign the EPA", Trade Negotiations Insights, Vol. 7, No. 8, October 2008.

³ See for example, GTZ Working Paper, "Cariforum EPA and beyond: Recommendations for negotiations on Services and Trade related Issues in EPAs", 2008

knowledge of the regulatory framework on internal harmonization is significant in order to be able to assess what kind of access can be asked of the EU, because in sectors where there is internal harmonization, the EU's willingness to negotiate for EU-wide access may be higher.

For other areas, it is likely that any broad-based request to the EU that they should dismantle their internal restrictions, could be a non-starter, primarily because of the non-feasibility of such a suggestion being implemented by the EU as a whole. Nevertheless, negotiators from African countries could consider streamlining and focusing their efforts in respect of select service sectors, and target their requests to select EU countries that are of maximum trading interest for African countries. Whether such a strategy will succeed or not, remains to be tested in the negotiating process. But it would certainly have the benefit of focusing the discussions on the sectors and countries which are important for African countries.

While structuring requests from African countries, it is also equally important to understand EU's Revised Offer presented to the WTO in 2005. This Revised Offer presents a potential scenario of multilateral liberalization further to EC's existing commitments under the WTO's General Agreement on Trade in Services. An assessment of the extent to which the EU-Cariforum schedules match up to the promise of EU's Revised Offer, or go beyond what the Revised Offer has indicated, could potentially be used by African countries to understand the benefits of entering into the EPA, understand which EU Members of specific trading interest to them continue to maintain restrictions, and use this as the basis for defining their requests to the EU. This assessment could also lead to a better understanding of the nature of challenges and opportunities that exist for African countries in the EU market.

At the outset, it should also be emphasized that this report seeks to outline a comprehensive list of requests based on the continued restrictions in does not seek to provide '*one-size fits all*' solutions for all African countries. It seeks to articulate certain potential requests that African countries could consider, based on (a) an assessment of EU's internal regulatory framework on services; (b) EU's Revised Offer and its commitments under the Cariforum EPA, and (c) a preliminary identification of service sectors and EU countries that could be of maximum interest for African countries. While framing actual requests to the EU, each African country would need to select and refine these requests, based on the interests of their services industries, service professionals and their associations. While doing so, the requests need to be prioritised and certain requests could be used as negotiating tools to achieve better access or concessions in areas that are of greater interest. This exercise needs to be done at the level of each African country, depending on its specific interests. Focused and customised requests from each African country articulated on the basis of their specific concerns and interests, has a greater likelihood to succeed, than a common list of requests from all the African countries. Requests will also need to be modified and structured based on what the EU actually offers to African countries. This report is meant to act as a facilitating tool in order to enable African countries to draw up requests that are most suitable to them.

TERMS OF REFERENCE

In view of the above background, the terms of reference provided for this study are as follows:

- (i) Analysis of the state of internal liberalization of services within the EC to understand the extent to which European nationals have access to markets in countries other than their home country, within the EC. This will include a general overview of the service sectors in respect of which greater harmonization has been achieved so far, as well as an assessment of developments specific to the certain key sectors identified in Annexure A to this report.
- (ii) A comparison of EC's Schedule of Commitments under the EC-Cariforum EPA and EC's Revised Offer at the GATS, and identification of gaps, if any between the two. This analysis will comprise of the following elements:
 - a. An assessment of the nature of restrictions that exist horizontally across all sectors. The focus of this assessment will be on restrictions specified by EC as a whole, and those applicable in respect of certain EC Member states in which African countries have significant trading interests. These include: UK, Ireland, Netherlands, Sweden, Denmark, France, Belgium, Germany, Austria, Spain and Italy [hereinafter the 'Key EC Members'].
 - b. Identification of restrictions to market access and national treatment in respect of the Key Sectors: (i) Medical and Dental Services; (ii) Services provided by Nurses, Midwives, Physiotherapists and paramedical personnel; (iii) Computer and related services; (iv) Research and Development services; (v) Communication services (including postal, courier, telecommunication and audiovisual services); (vi) Educational services; (vii) Financial services; (viii) Tourism and travel related services; (ix) Recreational, cultural and sporting services and (x) Transport services. (The complete list of service sectors and sub-sectors is annexed as Annexure A to this report).

While identifying such restrictions, the analysis will also highlight the extent to which restrictions exist in EC as a whole and those in the Key EC Members. While the study will map the existing nature of restrictions with respect to all modes of service delivery, it will also separately highlight the main barriers and opportunities in the Key Sectors that exist with respect to Modes 1 and 4.
 - c. The value of the Protocol on Cultural Cooperation in the EC-Cariforum EPA to address Audiovisual services, will also be assessed. This will be examined in view of restrictions that have been scheduled in relation to audiovisual and cultural services, to understand the full scope and potential of the protocol.
- (iii)Based on the analysis identified above, draw conclusions regarding a request list that the African countries could potentially ask of the EU in their negotiations in relation to these sectors.

OUTLINE OF THE REPORT

This report has the following layout:

Part I provides a broad overview of the internal market for services in the EU.

Part II is divided into 2 sub-parts: (i) Discussion on Cross-sectoral aspects, and (ii) Discussion on sector-specific issues. Each of these sub-parts will provide a discussion on the nature of requests that can be made to the EU.

Part III deals with the Protocol on Cultural Cooperation.

Part IV summarizes the main conclusions and recommendations of the report.

PART I: UNDERSTANDING EU'S MARKET FOR SERVICES

- 1.1 As discussed above, lack of internal harmonization within EU is one of the biggest challenges while negotiating market access into the EU services market. There is no single 'internal market' for services. Harmonization of regulations and practices relating to practice of various services within the EC is still at a nascent stage of development. The diversity of regulations and practices between EC Members effectively means that the negotiations need to be conducted with 27 different countries in most sectors. As a general rule, the more a profession is linked to cultural and societal circumstances, the harder it is to develop harmonized standards or establish partial or full equivalence between systems. As indicated earlier, this is not just a EU vs. non-EU issue. Even within the EU, Member states do not allow access easily for professionals from other Member states. In fact service providers some of the newer EU Members from Eastern Europe, face higher restrictions into some of the older EU Members. At the outset, therefore, it is important to understand the possibilities and practical limitations while negotiating access into the EC market.
- 1.2 The main legal instruments that need to be studied in the context of understanding services liberalization within the EC are:
- (a) Directive 2005/36/EC also referred to as the Mutual Recognition Directive (or MR Directive), which seeks to put in place a system for easier recognition of qualifications from other EC Members. This came into force in October 2007.
 - (b) Recommendation on the establishment of the European Qualifications Framework for lifelong learning (EQF), which was adopted by the European Parliament in April 2008. The main purpose of the EQF is to act as a translation device and neutral reference point for comparing qualifications across different education and training systems.
 - (c) Directive 2006/123/EC also referred to as the Services Directive. The Services Directive seeks to promote two basic objectives: the freedom of establishment and the freedom to provide services across borders through simpler administrative procedures.
- 1.3 These directives will be briefly explained in this Part I. As will be seen in the discussions below, these attempts at intra-EU harmonization have a long way to proceed before a genuine internal market in services is achieved. As they exist, they represent incremental progress within the EU towards harmonization. These developments however will have limited value for service providers from African countries, since non-EU nationals cannot seek the same benefits in terms of recognition and treatment as EU nationals. An understanding of these developments is nevertheless necessary in order to obtain an overview of the challenges that are faced even within the EU in respect of access to the market for services in each Member. Directives such as the MR Directive dealing with Mutual Recognition of professions, also provides important pointers as regards the nature of professions in which Mutual Recognition Agreements between the EU and any third country, is more likely to succeed because of the degree of internal harmonization that already exists.

I.A MUTUAL RECOGNITION DIRECTIVE

- 1.4 Mutual Recognition, as the term indicates, refers to mutual recognition of qualifications and experience of service professionals, which in effect provide the right to a service professional qualified in one jurisdiction to render services in another jurisdiction. This is one of the basic directives that governs movement of EU professionals from one EU member to another. Because of the diversity of qualifications and regulatory requirements for rendering services in each EC Member, Mutual Recognition or MR, has been a contentious issue. MR based on harmonization of curricula has gone furthest in the Health sector (i.e., medicine, pharmacy, nursing, veterinary science) and in Architecture. In other professional services, there is no automatic recognition of qualifications.
- 1.5 The EC Directive 2005/36/EC, also popularly referred to as the Mutual Recognition Directive or the ‘**MR Directive**’, is the first comprehensive step towards harmonization within EC. It is applicable only to seven professions: Doctors, Nurses, Midwives, Pharmacists, Dentists, Veterinarians and Architects. This Directive came into effect in October 2007. Pursuant to this Directive, for these seven professions, recognition of qualifications is automatic. In other words the required qualifications or diploma offered in one EU Member will be automatically recognized in another Member without any further requirement for assessing equivalence of qualifications.
- 1.6 The MR Directive also provides a more expeditious form of assessment and approval for professions relating to *arts, craft and the industry sector* when the EU national applying for recognition has the requisite number of years of professional experience as prescribed under the Directive⁴. Again, EU nationality is a necessary element for applicability of this Directive. Professionals in service sectors such as certain types of manufacturing activities, personal services (maintenance, cleaning, beauty parlours, etc.), recreation, sporting, transport, restaurants, cafes, hotels, etc, can potentially benefit from this. Experience requirements as prescribed in Annex IV to the MR Directive range from six (6) consecutive years for manufacturing, to five (5) consecutive years for personal services (such as maintenance, cleaning), to three (3) consecutive years for beauty parlour related services and recreation services.⁵
- 1.7 For all remaining professions, an EU national migrating from one EU Member to another, has to apply to the authorities in the host country for their qualifications to be assessed as equivalent to the local ones.
- 1.8 It is important to note that only very limited number of professions are covered under the MR Directive. Each EU Member has several “regulated professions”. This varies from Member to Member. For example: UK has 155 regulated professions; France has 49 regulated professions; Italy has 95 regulated professions. Harmonization of regulations in only seven professions under the MR Directive, therefore, is only the tip of the iceberg, and a genuine internal market for services is yet to be achieved within the EU.

⁴ See, Articles 17-19 & Annex IV of the MR Directive.

⁵ There are variations in number of years specified under Articles 17, 18 and 19, depending on whether the concerned professional has a certificate/degree from a recognized institution in a Member state, or recognition from a professional body.

- 1.9 It is also equally important to underscore that even for the seven professions where harmonization has been achieved, the MR Directive is applicable only for EU nationals. As explained above, if Senegalese doctor or architect qualifies in the UK, the EC Directive does not grant such professional automatic recognition in say, France or Italy. Any non-EU national will have to apply separately for such recognition.
- 1.10 In fact Annex IV.d to the Cariforum EPA clearly states that “*EC directives on mutual recognition of diplomas only apply to nationals of EU Member States. The right to practise a regulated professional service in one Member State does not grant the right to practise in another Member State.*” A footnote to this provision further states that MRAs with the Cariforum countries are necessary for applicability of mutual recognition to their nationals.

I.B EUROPEAN QUALIFICATIONS FRAMEWORK

- 1.11 On 23 April 2008, the Council and the European Parliament formally adopted the Recommendation on the establishment of the European Qualifications Framework for lifelong learning (EQF). The main purpose of the EQF is to act as a translation device and neutral reference point for comparing qualifications across different education and training systems. To achieve this objective, eight levels have been fixed in which qualifications will be classified. Member States are invited to indicate the EQF level on each qualification by 2012. EQF levels simply provide a basis for comparative assessment of levels of education and qualification between different EC Member states. Unlike the MR Directive, they do not result in recognition of equivalence of different qualifications. It simply provides a ready framework for assessment of qualifications which can help the relevant national authorities to prescribe requirements relating to any incremental education or training or work experience related qualifications that may need to be undertaken by the relevant professional.
- 1.12 As with the MR Directive discussed above, EQF benefits will be available only for EC nationals. Non-EC nationals, even if they possess qualifications from a EU Member, cannot under the terms of the Directive, avail of the benefits of recognition in another EU Member.

I.C SERVICES DIRECTIVE

- 1.13 The Services Directive, i.e., Directive 2006/123/EC of the European Parliament⁶, applies to a wide range of service activities. Its provisions primarily relate to the freedom of establishment and the free movement of services. It seeks to achieve this by removing legal and administrative barriers to the development of service activities between Members. The Directive requires each EC Member to put in place a variety of practical measures such as points of single contact for service providers, electronic procedures and administrative cooperation. Its main objective is to make it easier for businesses to

⁶ Also Directive of the European Council of 12 December 2006 on Services in the Internal Market, OJ L376 of 27.12.2006, p. 36.

temporarily provide and consumers to use cross-border services in the EU. Members are required to put in place appropriate mechanisms by January 2009; however, there have been reports about several states delaying implementation.

- 1.14 The rules of the Services Directive apply to a wide variety of activities, whether provided to business or to consumers. Without being exhaustive, the following can be mentioned as examples of services covered by the Directive: the activities of most of the regulated professions (such as legal and fiscal advisers, architects, engineers, accountants, surveyors), craftsmen, business-related services (such as office maintenance, management consultancy, the organisation of events, recovery of debts, advertising and recruitment services), distributive trades (including retail and wholesale of goods and services), services in the field of tourism (such as services of travel agencies), leisure services (such as services provided by sports centres and amusement parks), construction services, services in the area of installation and maintenance of equipment, information services (such as web portals, news agency activities, publishing, computer programming activities), accommodation and food services (such as hotels, restaurants, catering services), services in the area of training and education, rental (including car rental) and leasing services, real estate services, certification and testing services, household support services (such as cleaning services, private nannies or gardening services), etc.
- 1.15 For all the above mentioned service sectors, the Directive mandates legal and administrative procedures that facilitate freedom to exercise right to provide services throughout the EU. It allows for branches and subsidiaries to be established with ease. It also eases the requirements relating to recognition of professional qualifications for purposes of secondment, etc.; however this is only in relation to secondment of EU nationals.
- 1.16 What is more important from the perspective of a trading partner is to understand the ‘exclusions’ from the Services Directive. The Services Directive explicitly excludes a number of services from its scope. These exclusions are optional in the sense that Member States may, if they so wish, apply some of the general principles and arrangements provided in the Services Directive, such as the “points of single contact”, to some or all of the excluded services. The list of excluded services are: financial services, electronic communications services, transport services (including port services), healthcare services, audiovisual services, certain social services, private security services, and services provided by notaries and baliffs. With regard to the ‘excluded sectors’, complex legal and administrative mechanisms will continue to apply because of lack of internal harmonization within the EU.
- 1.17 As is evident from the discussion above, the Services Directive applies both to natural and juridical persons. To the extent that it applies to juridical persons established in a EU Member, the Services Directive will benefit an entity from an African country that has set up commercial presence in the EU as an EU juridical entity. The Directive will however not have any implications for professionals from African countries who are employed by a EU juridical entity, who may seek temporary migration, such as secondment, from one EU Member to another. With regard to natural persons, the EU Directive is concerned only with EU nationals.

PART II: COMPARING EU-CARIFORUM WITH EU-REVISED OFFER IN KEY SECTORS

II.A OVERVIEW

2.1 Part II of this report will focus on a comparison of EU's Schedule of Commitments under the EU-Cariforum EPA and EU's Revised Offer at the GATS, and identification of gaps, if any between the two in certain Key Sectors: (i) Medical and Dental Services; (ii) Services provided by Nurses, Midwives, Physiotherapists and paramedical personnel; (iii) Computer and related services; (iv) Research and Development services; (v) Communication services (including postal, courier, telecommunication and audiovisual services); (vi) Educational services; (vii) Financial services; (viii) Tourism and travel related services; (ix) Recreational, cultural and sporting services and (x) Transport services. (The complete list of service sectors and sub-sectors is annexed as Annexure A to this report).

2.2 At the outset, it should be highlighted that the EC is completely closed to liberalization in the following sectors. This is reflected under both the EU Schedule to the EU-Cariforum EPA and the EU Revised Offer.

- (i) Audio-visual services
- (ii) National Maritime Cabotage (covering transport services within the territory of a Party for the carriage of passengers or goods originating and terminating in the Party)
- (iii) National and International Air Transport Services, other than:
 - Aircraft repair and maintenance (when aircraft is withdrawn from service)
 - Selling and marketing of air transport services
 - Computer Reservation System
 - Other ancillary services

2.3 The EC Member States in which African countries have significant trading interests, include UK, Ireland, Netherlands, Sweden, Denmark, France, Belgium, Germany, Austria, Spain and Italy. The nature of restrictions in the Key Sectors, if any, in these Key EC Members, will be highlighted for the purpose of analysis in this Part II.

2.4 Before undertaking a sectoral analysis, there are a few issues cutting across sectors that are of importance. These will be addressed first, before the sectoral analysis is undertaken. These cross-sectoral issues pertain to:

- (i) Issues relating to the chapter on 'Regulatory Framework' under the Cariforum EPA;
- (ii) Issues relating to Mode 4 under the Cariforum EPA; and
- (iii) Issues relating to Mode 3 under the Cariforum EPA.

II.B CROSS-SECTORAL ISSUES

II.B.1 MUTUAL RECOGNITION AGREEMENTS UNDER THE EPA

- 2.5 While the Cariforum EPA provides a general framework for concluding MRAs, there are several additional aspects that could be considered for strengthening the provisions on MRAs and domestic regulation in general.
- 2.6 Given the interest of countries from Africa in Mode 4 of service delivery (i.e., temporary movement of natural persons for the purpose of delivery of service), the MR Directive and developments under this directive, could hold pointers to the nature of sectors where the greater degree of internal EU harmonization could potentially translate to Mutual Recognition Agreements (MRAs).
- 2.7 The EU-Cariforum EPA contains a general statement of ‘encouragement’ to professional bodies to conclude MRAs. It further specifically highlights the possibility of MRAs in the sectors of Accounting, Architecture, Engineering and Tourism. In these sectors, the relevant professional bodies are required to meet within three years of the EPA to begin negotiations. However, there are no firm timelines, or commitments to conclude MRAs.
- 2.8 In addition to provisions on MRAs, the EPA should also have provisions relating to evaluation of certification and qualifications for sectors where a MRA has not been achieved. For example, the EU-Chile FTA has provisions committing each party to evaluating licenses and certification within strict timelines.⁷ The EU-Chile FTA also contains a provision dealing with ‘Domestic Regulation’. This is worded similar to Article VI of the GATS⁸, and has two unique additional aspects:
- If one of the Parties enters into an agreement for recognition of qualification and criteria in any service sector with a third party, it shall afford the other Party to the Agreement an opportunity to negotiate such principles as well; and
 - The Parties are required to consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other’s service suppliers⁹.
- 2.9 The first point above is a useful tool for countries with offensive interests in Mode 4 to have, so as to have access to any MRAs that are opened for negotiations by the other party. This option could be considered by African countries as well. The second provision highlighted above is critical in any agreement on trade in services, since domestic measures affecting services sometimes constitute some of the most problematic barriers for service professionals.
- 2.10 While referring to MRAs, it is also important to highlight that MRAs are particularly relevant in respect of access for Mode 4 professionals who fall within the categories of ‘Contractual Service Suppliers’ and ‘Independent Professionals’. The meaning of these

⁷ Article 103, EC-Chile FTA

⁸ Article VI of the GATS deals with ‘Domestic Regulation’ and mandates that measures affecting trade in services are administered in a reasonable, objective and impartial manner.

⁹ Article 102, EC-Chile FTA

two terms and extent to which the EC-Cariforum schedule allows access for such professionals, is dealt with in the section II.B.2 below.

RECOMMENDATIONS ON CHAPTER DEALING WITH MUTUAL RECOGNITION UNDER THE EPA

- 2.11 At a minimum, African countries should consider requesting for MRAs in the sectors of Accounting, Architecture, Engineering and Tourism, as is the case in the Cariforum EPA. Additionally, they should also request for MRAs in the health sector related professions (doctors, nurses, midwives and pharmacists), since these professions are covered under EC's MR Directive. These are also important in order to translate into better Mode 4 access for professionals within the health sector, which has been liberalized in the EU-Cariforum schedule.
- 2.12 MRAs covering the art, crafts and industry sectors (which could benefit professionals working in recreation, sporting, transport, beautician services, restaurants, cafes, hotels, etc.), are also agreements that could be of potential interest for African countries. These have not been envisaged under any of the other EU FTAs as yet. However, internally, the EU MR Directive discussed earlier, does envisage the possibility for expeditious mechanisms within EU Members for evaluation of qualifications and certifications for professionals involved in such services. While MRAs with non-EU Members in this area is uncharted territory, it may well be worth exploring given the higher degree of regulatory convergence within the EU on this aspect.
- 2.13 It is also important to underscore that the entry of service professionals will eventually be assessed on the basis of the practical ease of such access. Regulatory and a variety of procedural requirements in the EU often make such access practically difficult. The Cariforum EPA has a general provision under Article 87, to the effect that where authorization is required for the supply of a service or commercial presence on which a specific commitment has been made, the competent authorities of the parties shall inform the applicant of the decision concerning the application for entry. At the request of the applicant, the competent authorities of the parties are also required to provide, information concerning the status of the application. While this is a useful provision, more detailed provisions may need to be considered dealing with the following principles:
- Transparent procedures and strict timelines for evaluating licenses and certification of the other party's service provider;
 - Procedures for fulfilling any shortcomings in an application;
 - The concerned authority should provide reasons for any rejection of an application for recognition of qualifications,
 - Procedures for review of such provisions.
 - If one of the Parties enters into an agreement for recognition of qualification and criteria in any service sector with a third party, it shall afford the other Party to the Agreement an opportunity to negotiate such principles as well.
 - The Parties are required to consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service suppliers.
- 2.14 These provisions are significant in order to ensure practical ease of access into the EU market. By their very nature, these requirements would operate as requirements that African countries would need to comply with as well. The preparedness of African countries to undertake these obligations, would therefore also need to be considered.

II.B.2 MODE 4 RELATED LIBERALIZATION

- 2.15 Mode 4, i.e., supply of services through temporary movement of natural persons to the host country, is one of the main modes of service delivery that African countries would be interested in. Mode 4 relates to movement of foreign professionals and is a highly sensitive issue for most countries. Real gains from Mode 4, therefore, are arguably, some of most difficult to obtain in any agreement dealing with trade in services. Even when commitments in Mode 4 are made under a trade agreement, domestic regulations relating to immigration and visa, requirements relating to approval by relevant authorities/professional bodies, as well as several other levels of screening, such as ‘economic needs tests’, nationality and residency requirements, often act as hurdles to real access. It is with this caveat that one should examine the Mode 4 related commitments by the EU under the Cariforum EPA, which has been hailed as the most liberal and comprehensive Mode 4 commitments in any EU FTA, and is incrementally better than the EU Revised Offer in respect of increasing Mode 4 access in a few sectors.
- 2.16 Under the EU-Cariforum EPA, the EU has lodged commitments for contractual services suppliers, and, to a lesser extent, independent professionals, in several services sectors, including new services sectors such as tourist guides, entertainers, artists, chefs de cuisine and fashion models. Before examining the opportunities and limitations of Mode 4 liberalization, it would also be useful to highlight the category of professionals that qualify under Mode 4. These can be divided into three broad categories:
- (a) Mode 4 linked to Commercial Presence of Mode 3, which includes personnel such as intra-corporate transferees (ICTs), managers and specialists in a company who seek access to the branch or subsidiary that has found presence as Mode 3, and/or graduate trainees. ICTs and managers are also referred to as ‘Key Personnel’.
 - (b) Contractual Service Suppliers (CSS), which includes natural persons employed by a juridical entity of the providing country, which has no commercial presence in the territory of the other country, and which has concluded a bona fide contract to supply services with a final consumer in the latter country requiring the presence on a temporary basis of its employees in that country in order to fulfil the contract to provide services, and
 - (c) Independent Professionals (IPs), which includes self-employed professionals from one country who enter directly into a contract to provide services to a consumer in the other country.
- 2.17 African countries may not have offensive interests in respect of Mode 3 access into EU markets. Therefore Mode 4 access for the categories of professionals mentioned in (a) above, may not be of as significance as for CSS and IPs. The discussions below will focus on the extent to which access for CSS and IPs is envisaged under the Cariforum EPA.
- 2.18 There is incremental progress in terms of number of service sectors for which CSS and IPs are allowed under the EU-Cariforum EPA. This list of service sectors is a little longer than the ones in other EU FTAs and also the EU Revised Offer. An overview of the same is as follows:

- The EU has granted market access in 29 sectors for Caribbean Contractual Service Suppliers (CSS) to enter the EU to supply services once a contract has been secured. There are seven sectors which are not covered under the EU Revised Offer, but which are allowed under the EU-Cariforum EPA: these are highlighted in red, and by an asterix, in the table below. The ‘Construction’ service sector is the only one in respect of which EU’s Revised Offer allows for CSS; however the Cariforum-EPA omits this.

Sectors in which CSS are allowed by the EC under the Cariforum EPA

<ol style="list-style-type: none"> 1. Legal advisory services in respect of international public law and foreign law 2. Accounting and bookkeeping services 3. Taxation advisory services 4. Architectural services 5. Urban planning and landscape architecture services 6. Engineering services 7. Integrated Engineering services 8. Medical and dental services* 9. Veterinary services* 10. Midwives services* 11. Services provided by nurses, physiotherapists and paramedical personnel* 12. Computer and related services 13. Research and development services 14. Advertising services 15. Market Research and Opinion Polling* 16. Management consulting services 17. Services related to management consulting 18. Technical testing and analysis services 19. Related scientific and technical consulting services 20. Maintenance and repair of equipment 21. Chef de cuisine services 22. Fashion model services 23. Translation and interpretation* services 24. Site investigation work 25. Higher education services (only privately-funded services) 26. Environmental services 27. Travel agencies and tour operators' services 28. Tourist guides services* 29. Entertainment services other than audiovisual services* <p><i>*Note: Refers to sectors that are liberalized under the Cariforum EPA but not the EU Revised Offer.</i></p>
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- The EU has liberalized 11 sectors for temporary entry by CARIFORUM Independent Professionals (IPs). This is an improvement over the nine sectors covered under the EU Revised Offer. The additional service sectors liberalized under the Cariforum EPA is highlighted in red, and by an asterix, in the table below.

Sectors in which IPs are allowed by the EC under the Cariforum EPA

<ol style="list-style-type: none"> 1. Legal advisory services in respect of international public law and foreign law (i.e. non-EU law) 2. Architectural services 3. Urban planning and landscape architecture services 4. Engineering services
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5. Integrated Engineering services
6. Computer and related services
- 7. Research and development services***
- 8. Market Research and Opinion Polling***
9. Management consulting services
10. Services related to management consulting
11. Translation and **interpretation*** services

**Note: Refers to sectors that are liberalized under the Cariforum EPA but not the EU Revised Offer.*

2.19 As mentioned earlier, it should however be underscored that the afore-mentioned list does not mean that EU Members cannot place any further restrictions on Mode 4 access. Several EU Members have carved the right to maintain economic needs tests as pre-conditions to entry of CSS and IPs. Several others impose nationality and residence requirements, which further dilute their commitments. How such restrictions play out in the Key Sectors under discussion, will be discussed in Part II.C of this report.

2.20 Certain common general limitations that need to be kept in view while assessing EU's Mode 4 commitments, are as follows:

- (a) Mode 4 is mostly related to skilled professionals, and not to mid to low-skilled persons. This could be an inherent limitation to the EPA process.
- (b) EU Members have the maximum number of restrictions for Mode 4 in respect of the sectors pertaining to Higher Education, Financial Services, Health Services and Maritime Transport.
- (c) Some EU Members continue to main restrictions in the nature of Nationality and Residence requirements, as well as Economic Needs Tests, which nullify Mode 4 entry. Such requirements are far lesser under the Cariforum EPA than under EU's Revised Offer; which is a definite improvement. The extent to which such limitations are maintained in respect of the Key Sectors in the Key Members, will be discussed in the sector-specific analysis.
- (d) Another important limitation is that the EU generally allows for greater ease of Mode 4 access when this is linked to commercial presence of an enterprise. This relates mainly to movement of business visitors, intra-corporate transferees, (which includes managers and specialized persons), and graduate trainees. The EU, as with most developed countries, has been more hesitant to allow Mode 4 with regard to 'contractual service suppliers'¹⁰ (CSS) and 'independent professionals'¹¹ (IPs), who are professionals that are not linked to any commercial presence within the EU. The reason is because of fear of any potential emigration related issues by such persons. This is the same trend that is seen under the Cariforum EPA.

¹⁰ Article 80 of the Cariforum EPA defines 'Contractual services suppliers' as "natural persons of the EC Party or of the Signatory CARIFORUM States employed by a juridical person of that EC Party or Signatory CARIFORUM State which has no commercial presence in the territory of the other Party and which has concluded a bona fide contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services."

¹¹ Article 80 of the Cariforum EPA defines Independent professionals as "natural persons of the EC Party or of the Signatory CARIFORUM States engaged in the supply of a service and established as self-employed in the territory of that EC Party or Signatory CARIFORUM State who have no commercial presence in the territory of the other Party and who have concluded a bona fide contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services."

- (e) The main difference between entry for CSS and IP, and intra-corporate transferees (one of the categories of Mode 4 linked to Mode 3- commercial presence), is that while intra-corporate transferees are allowed entry for up to three years, CSS and IP can stay for only up to six months in a year, and their contract for service cannot exceed twelve months. This is an important limitation for service suppliers who do not have a commercial presence in the EU. Other differences include stricter qualification and experience requirements for CSS and IPs.
- (f) Immigration and visa related issues are another big barrier to Mode 4 entry. Visa related requirements and immigration falls outside the purview of the EU mandate. However, it is important to be cognizant of the fact that these requirements have serious practical implications for Mode 4. There is considerable variability in the timelines, documentation and other requirements for both work permits (required for intra-corporate transferees, CSS and IPs), and business visa applicants across different EU Members. Free mobility between EU members is also restricted.

EU BLUE CARD SCHEME

2.21 As mentioned in point (f) in para 2.19 above, immigration and visa related issues are a big barrier to Mode 4 entry. Visa related requirements and immigration, however, fall outside the purview of the EPA negotiations. There is also no uniformity within the EU on this aspect. Free mobility between EU members is also restricted. It is in this regard that it would be of interest for any EU trading partner to be cognizant of some of the recent debates and developments relating to temporary immigration related issues under the proposed EU Blue Card Scheme. While these may have limited immediate value for the EPA negotiations, these developments present insights into how the EU Members are viewing immigration related issues. Another possibility that could be explored, is to advance some of the elements of such developments as part of the Mode 4 discussions, in order to facilitate easier access.

2.22 The EU Blue Card scheme that is currently being considered within the EU, envisages a single work and residence permit for “highly skilled” professionals for up to two years, which can be renewed for periods of two years. A key element of the ‘Blue Card’ scheme is that there has to be an ‘Employer’ of the service provider in the EU. Such EU Employers would be required to show that an EU citizen could not be found to fill the concerned job, before they can engage a foreign national. The main purpose of the Blue Card is to fulfill any skill shortfalls within the EU. For the service provider, the intended attraction of the Blue Card is that, once it is in place in all EU members, it is expected to address the issue of the EU fragmented market, and allow the Blue Card holder access to all of EU. Immediate family members can also accompany a Blue Card holder. This scheme is not meant for ‘permanent residency’; however, the concerned professional is to be given the option to apply for permanent residency, along with her/his family, if s/he stays in a EU Member for five (5) years.

2.23 The Blue Card scheme is still under debate and discussion within the EU. It is expected to come into effect in the first few months of 2009. Germany and Austria have expressed a desire to retain complete control over their labour markets. New member states in Eastern Europe are unlikely to adopt the Blue Card scheme unless work restrictions placed on their own citizens by some older EU member states, is removed. Three members of the EU, namely Denmark, Ireland and the UK, have provisions in their

EU treaties that allow them to opt out of the Blue Card program altogether. In fact all EU Members currently follow their own unilateral schemes and those that do not adopt the EU Blue Card scheme, would continue with the same.¹²

2.24 Among the Mode 4 categories, the Blue Card Scheme, as it exists, may have some positive implications for ICTs. However, it is unlikely that it can benefit CSS and IPs, since by definition, CSS and IPs are required to have ‘home country’ linkages.¹³ By definition, a Blue Card professional would need to be ‘employed’ by an EU employer. Another fundamental difference is that the Blue Card could potentially translate to ‘permanent residence’; while this is anti-thetical to the concept of Mode 4- which symbolises only temporary movement. The Blue Card scheme however holds important insights as to the fact that EU Members are gradually facilitating access for highly skilled professionals within the EU, although this continues to be heavily predicated on labour market tests and economic needs tests.

2.25 Based on the discussions above, three of the Blue Card’s fundamental benefits for professionals are: (a) free mobility within EU countries; (b) freedom of entry for immediate family members; and (c) ability to apply for permanent residence after 5 years. The last point on permanent residence, as mentioned earlier, is antithetical to the concept of Mode 4. However, the first two points on free mobility within the EU, and freedom of entry for family members, are aspects that are essential for effective Mode 4 access. It may therefore be worth exploring these elements with the EU, that in respect of sectors where Mode 4 access is allowed within the EPA, whether for ICTs, or CSS or IP, access to one EU member should entitle the professional to free mobility in other EU members. While obtaining EU support for such a proposition may be difficult, because of the inherent sensitivities involved, this could be an ideal worth keeping on the agenda for discussions, for the EPA negotiations, as well as for further rounds of discussions once the EPA is concluded.

RECOMMENDATIONS ON MODE 4 RELATED ISSUES

2.26 One the basis of the discussions in this part II.B.2, the following recommendations could be considered in respect of Mode 4.

2.27 EU Members should be requested not to impose residence and nationality requirements in respect of Mode 4. EU Members should be requested not to use restrictions such as Economic Needs tests and Numerical quotas for Mode 4 entry in all categories: ICTs, Graduate Trainees, CSS and IPs. Such requirements could effectively dilute Mode 4 access, and thereby any potential benefits from such access. The extent to which this is an issue in the Key Sectors will be studied separately in the sector-specific analysis later in this report.

¹² For example, the UK has a new five-tier system for immigration and work permits for non-EU citizens: see, <http://www.workpermit.com/uk/uk-immigration-tier-system.htm>; Ireland has a Green Card scheme for non-EU citizens: http://www.workpermit.com/ireland/irish_green_card_scheme.htm.

¹³ Article 80(2)(d) of the EC-Cariforum EPA defines a Contractual Service Supplier. A key element of the definition is that such service provider needs to be an ‘employee’ of the juridical person of the other state; i.e., a Caribbean contractual service supplier needs to be an employee of a Caribbean juridical person that has no presence in the EC. Similarly, a Caribbean Independent Professional needs to be ‘self-employed’ in a Caribbean state.

2.28 List of Sectors allowing CSS and IPs:

The list of sectors for CSS and IPs seems to broadly cover many of Key Sectors that may be of specific interest for African countries. Improvisations in EU's offer may however need to be requested in respect of the following:

(i) Mode 4 access for Independent Professionals in respect of the following services:

- Medical and dental services;
- Midwives services;
- Services by Nurses, Physiotherapists and paramedical personnel;
- Entertainment services (including recreational, cultural and sporting services);
- Educational Services (including, primary, secondary, higher and adult education services, and other educational services).

(ii) Mode 4 access for Contractual Service Suppliers in respect of the following services:

- The requirement that CSS entry for 'higher education' is restricted only for 'privately funded' higher education, should be dropped, since this is a requirement that is an addition to EU's Revised Offer;
- CSS entry should be requested for Primary, secondary, and adult education services, and other educational services¹⁴;
- Qualification and ENT requirements should be dropped in respect of Entertainment services by EU Members. Qualification requirements in the schedule goes against Article 83(2)(c) of the Cariforum EPA, that excludes entertainment services as a category wherein qualifications needs to be assessed.

2.29 MRAs for select service sectors:

Mutual Recognition Agreements or MRAs is essential for ease of recognition of qualifications and certifications for Mode 4 professionals. Ideally, MRAs in all sectors for which CSS and IPs are allowed, could translate to more meaningful access for such professionals. Since such a possibility may not be practically feasible, given the limited number of sectors for which EU is willing to consider MRAs, it would be important to streamline the request in relation to MRAs. As discussed in the recommendations in paras 2.11 to 2.14 of this report, at a minimum African countries should consider requesting for MRAs in the sectors of Accounting, Architecture, Engineering and Tourism, as is the case in the Cariforum EPA. Additionally, they should also request for MRAs in the health sector related professions (doctors, nurses, midwives and pharmacists), since these professions are covered under EC's MR Directive. These are also important in order to translate into better Mode 4 access for professionals within the health sector, which has been liberalized in the EU-Cariforum schedule.

Additionally, MRAs covering the art, crafts and industry sectors (which could benefit professionals working in recreation, sporting, transport, beautician services, restaurants, cafes, hotels, etc.), are also agreements that could be of potential interest for African countries.

2.30 Duration of Stay for CSS and IP:

¹⁴ Currently under the Cariforum EPA, CSS entry is allowed only in respect of 'privately funded higher educational services'.

- The EC-Cariforum approach for temporary stay of Mode 4 professionals is highly restrictive for CSS and IPs. When Mode 4 is related to Mode 3 commercial presence, the EPA provides for duration of stay up to three years for ICTs and twelve months for graduate trainees. However, duration of stay for CSS and IP is restricted to a six months in any 12 month period. African countries should consider requesting for more liberal access and duration of stay for CSS and IPs.
- Using the broad themes of the Blue card scheme, African countries may consider requesting for longer duration of entry for ICTs, CSS and IPs, for a period that can extend up to 2 years, and which can be renewed.

2.31 Free mobility within the EU

- As explained in para 2.24 above, drawing on from the broad elements of the Blue Card scheme, another request that could be considered is that for ICTs, CSS and IPs, EU should not subject the service professional to separate approval procedures by each EU Member's authorities; and that once one EU Member allows entry by a service professional under Mode 4, such professional would have free mobility within the EU for the duration of the Mode 4 access.
- Another aspect that could be built into the request is that inherent in Mode 4 access, should be the right of access for the immediate family members of the concerned service professional.

II.B.3 HORIZONTAL RESTRICTIONS ON MODE 3

2.32 Mode 3 access is generally perceived to be of limited interest for African countries, as compared to Modes 1 and 4. This is because any nascent market for services may not immediately be interested at setting up commercial presence in the host country. However, Mode 3 is likely to become more significant as the service sector grows and expands. Understanding Mode 3 related restrictions, therefore, is important. The recommendations here are a comprehensive list based on the restrictions in the Cariforum EPA, and would need to be prioritised for what may be most significant for each African country.

2.33 EU has several Mode 3 related restrictions, several of these being 'national treatment' (NT) restrictions. In other words, these restrictions are not applicable for EU nationals, or EU companies, setting up commercial presence. Many of these restrictions are similar to that used in EC's Revised Offer. The EC should be asked to remove these restrictions, and provide national treatment for nationals and companies from African countries.

2.34 On the positive side, it should also be highlighted that a few restrictions in the EU Revised Offer do not seem to appear under the Cariforum EPA. Examples of this include that NT Restrictions on subsidiaries of a company from a third country are not included in the Cariforum EPA. Several Member-specific restrictions on nature of establishment have also been removed in the Cariforum EPA.

2.35 However, in a few areas, the Cariforum EPA has certain new additional restrictions. To the extent that these are restrictions in Key Members, they will be highlighted for discussion. For example, Italy has introduced a requirement for special authorization for

industrial, commercial and artisanal activities under the Cariforum EPA. Spain and Ireland have specified new restrictions for real estate purchases.

- 2.36 The following recommendations pertain to a list of Mode 3 related restrictions that are applicable EU-wide, or some which are applicable only in Key EC Members where African countries may have maximum trading interest. The extent to which these restrictions are over and above the restrictions specified in EU's revised offer, will be highlighted separately.

RECOMMENDATIONS IN RESPECT OF MODE 3 CROSS-SECTORAL ISSUES

- 2.37 Public Utilities: 'Public utilities' can be subject to public monopolies or to exclusive rights to private operators.

Nature of Request: A clarification could be sought on the nature of services that are considered 'public utilities' by each Member State. A clarification should be sought regarding cases where exclusive rights are granted to private operators in respect of a 'public utility', can foreign operators apply for such exclusive rights in all EC Members? If not, the reasons for the same needs to be sought.

- 2.38 Treatment of Branches and Agencies of third country company: Both the Revised Offer and the Cariforum EPA specify that *branches and agencies* of a third country company will not be accorded national treatment. The EU Revised Offer however qualifies this by stating that this does not prevent a Member State from extending this treatment to branches or agencies established in another Member State by a third-country company or firm, as regards their operation in the first Member State's territory, unless such extension is explicitly prohibited by Community law.

Nature of Request: The specific request that African countries could ask the EC is that EC Member States should provide national treatment for branches and agencies that have already been established in another Member State by a third-country company or firm, since an establishment as a branch or agency would make the entity a EU juridical entity.

- 2.39 Access for Industrial, Commercial and Artisanal activities in Italy: Under the Cariforum EPA, Italy has specified a new requirement in relation to Industrial, Commercial and Artisanal activities, to the effect that access to these activities is subject to a permit and specific authorization to pursue the activity.

Nature of Request: Clarification on what services are considered as *Industrial, Commercial and Artisanal activities*, needs to be sought. Italy's requirement is something that has been proposed over and above the stated position in the EU Revised Offer, and African countries could consider asking Italy why this additional requirement has been specified. Information should also be sought on the nature of authorization that is required.

- 2.40 Legal Entity restrictions in Sweden: Sweden specifies as NT restrictions that:
- a. A founding party of a limited liability company shall either reside in Sweden or be a Swedish legal entity.

- b. A partnership can only be a founding party if each partner resides in Sweden.
- c. Corresponding conditions prevail for establishment of all other types of legal entities.
- d. The managing director and at least 50 per cent of the members of the board shall reside in Sweden.
- e. The managing director of a branch shall reside in Sweden. Foreign or Swedish citizens not residing in Sweden, who wish to conduct commercial operations in Sweden, shall appoint and register with the local authority a resident representative responsible for such activities.

Nature of Request: Request from African countries should be that these restrictions should not be made applicable at least in respect of the Key Sectors (the service sectors listed in Annexure 1 which are of specific trading interest for African countries.)

- 2.41 Investment Restrictions in France: In France, foreign purchases exceeding 33.33 per cent of the shares of capital or voting rights in existing French enterprises, or 20 per cent in publicly quoted French companies, are subject to several regulatory controls involving notification and verification.

Nature of Request: The request to France should be that these requirements are done away with and that investments from African countries are treated the same as investments from any other EC Member.

- 2.42 Real Estate Purchases in Spain and Ireland: Spain and Ireland had not specified any restrictions in relation acquisition of real estate by foreign investors under the EU Revised Offer. However these restrictions appear under the Cariforum EPA.

Nature of Request: Spain and Ireland should be requested to drawback restrictions on real estate purchases, to make this consistent with the EC Revised Offer.

II.C SECTOR-SPECIFIC ISSUES

- 2.43 This sub-part II.C will address the nature of restrictions and requests that can be sought in respect of the Key Sectors wherein countries of West and Central Africa have significant trading interest. As indicated earlier, the focus will be on restrictions in the Key Members, i.e., Austria, Belgium, Germany, Denmark, Spain, France, Ireland, Italy, Netherlands, Sweden and the United Kingdom.
- 2.44 The analysis below compares the EU Revised Offer under the WTO's GATS process with EU's schedule under the EU-Cariforum EPA. As mentioned earlier, in several areas the EU-Cariforum EPA improvises on EU's Revised Offer, which is a positive step. In those limited areas where there has been a claw-back by EU Members on their Revised Offer, these will be highlighted for negotiations.
- 2.45 Additionally, based on an analysis of the restrictions that appear in EC's schedule to the Cariforum EPA, certain potential requests to the EU have been drafted. These are designed as comprehensive requests to targeted EU members that are of specific trading interest to African countries. Keeping in view the special interest of African countries in Modes 1 and 4, requests in these modes have been particularly emphasized upon. The requests are comprehensive in the sense that they identify those areas where the concerned EU member of specific interest to an African country, maintains a restriction. As mentioned in the Introductory section, these proposed requests, however, will need to be carefully considered by the Governments, industry associations and professional bodies of each African country, and appropriately modified based on the specific interests of each country.
- 2.46 It is also likely that in several sectors, especially in relation to Mode 3 entry, the EU may have greater offensive interests with regard to the market in African countries. While structuring requests, African countries would need to prioritize what they want, anticipate what the EU may ask, and use certain aspects of the request to leverage better access in Modes 1 and 4 in sectors of interest. Cross-sectoral negotiations should form an integral part of discussions.

**II.C.1 MEDICAL, DENTAL, MIDWIVES SERVICES; SERVICES BY NURSES,
PARAMEDICS AND PHYSIOTHERAPISTS**

2.47 The commitments by EU under the EU-Cariforum EPA mirror its Revised Offer at the GATS in many instances. In a few modes and sub-sectors, however, EC has provided improved access under the Cariforum EPA. However, there are several restrictions specified by Key Members, especially in relation to Modes 1 and 4, which may be most relevance for African countries. In fact Mode 1 is Unbound in respect of each of services relating to Medical, Dental, Midwives, Nurses, Paramedics and Physiotherapists. Each of these sub-sectors is discussed separately below.

2.48 **Medical and Dental Services**

- **Mode 1:** EU Members have all not undertaken any commitments with regard to Mode 1 under both the GATS Revised Offer and the Cariforum EPA.
- **Mode 2:** The Cariforum EPA commitments by EU are an improvised version of their EU Revised Offer, under which no EU Member has maintained any Mode 2 restrictions.
- **Mode 3:** The EU Revised Offer specified restrictions by 20 EU Members on Mode 3; whereas under the Cariforum EPA, that number has been reduced to 12. However, a few of the Key Members of trading interest to African countries, have restrictions in the form of the following:
 - Austria has not made any commitments for Medical Services. It is open only for Dentists, Psychologists and Physiotherapists.
 - Germany has made its commitments subject to Economic Needs tests.
 - In France, foreign investors can invest only in specific legal forms.
 - In UK, establishment is subject to manpower planning.
- **Mode 4:** With regard to Mode 4, the EU Revised Offer had more number of restrictions for Key Personnel, while undertaking no commitments for CSS and IP. EU's commitments under the Cariforum EPA present improvements in that fewer EU Members continue to maintain restrictions. CSS are allowed in all EU Members under the Cariforum EPA, except for France, which has not undertaken any commitments. IPs are however not allowed. Following are a list of restrictions in the Key Members of specific interest for African countries. These are categorized separately as restrictions for Key Personnel and for CSS and IP.

A. Restrictions on Key Personnel

- Belgium has introduced a new restriction, not present in EU Revised Offer, regarding authorization for foreigners seeking entry as Graduate Trainees.
- Italy and Denmark have Residence requirements for Key Personnel. Denmark provides for limited authorization for Key Personnel subject to the residence requirement.
- Germany and France have specified Nationality requirements for Key Personnel.

B. Restrictions on CSS and IP

- France has not undertaken any commitments for CSS. It is 'Unbound', which means it can place any restrictions on such entry.
- No EU Member has taken commitments for IPs.
- Belgium, Germany, Denmark, Spain, Ireland, Italy, Netherlands and the UK can apply the Economic Needs test for allowing access for CSS.

2.49 Midwives Services:

- **Mode 1:** As mentioned earlier, Mode 1 is unbound in most EU Members. Among the Key Members of potential interest for African countries, Sweden is the only one which does not maintain restrictions on Mode 1.
- **Mode 2:** There are no restrictions in any of the EU Members.
- **Mode 3:** There have been substantial improvements from the EU Revised Offer. Under the Revised Offer, 20 EU Members had not made any commitments; under the Cariforum EPA, that number has been reduced to 4. France is the only one among Key Members that has specified restricted access, subject to foreign investment through specific legal forms.
- **Mode 4: Key Personnel**
In general, there is improved access for Key Personnel under the Cariforum EPA. However, the following Key Members main restrictions:
 - Belgium has introduced a new restriction, not present in EU Revised Offer, regarding authorization for foreigners seeking entry as Graduate Trainees.
 - Austria has introduced a new restriction, not present in EU Revised Offer, that person seeking to establish professional practice as Key Personnel should have had 3 years of prior experience.
 - France maintains a Nationality requirement for Key Personnel and has specified limited access under quotas.
 - Italy has Residence requirement for Key Personnel
- **Mode 4: CSS and IP**
CSS Access: There is a marked improvement in most EU Members from an Unbound status for CSS under the Revised offer, to access under the Cariforum EPA. However, France has not undertaken any commitments and continues its 'Unbound' status. Other Key Members, including Austria, Belgium, Germany, Denmark, Spain, Italy, Netherlands and the UK, have undertaken commitments subject to the ENT requirement.
IP Access: However, no EU Member has committed for IP access.

2.50 Services by Nurses, Paramedics, Physiotherapists:

- **Mode 1:** As mentioned earlier, Mode 1 is unbound in most EU Members.
- **Mode 2:** There is improved access from the Revised Offer, in that no EU Member has specified restrictions under Mode 2.
- **Mode 3:** Under the EU Revised Offer, 15 Members had not undertaken any commitments. Under the Cariforum EPA, that number is reduced to 8. All Key Members have undertaken commitments; however subject to restrictions in

Austria, which does not allow foreign investors for paramedics; and in France, where foreign investors can invest only in specific legal forms.

▪ **Mode 4- Key Personnel**

Austria, Belgium and France have specified restrictions under the Cariforum EPA, that were not present in the EU Revised Offer. Additionally, Denmark and Italy continue to main restrictions. These pertain to:

- Austria has specified that there would be no access for paramedics. For nurses and physiotherapists, it has a 3-year experience requirement.
- Belgium and France have specified the need for authorization for Graduate Trainees.
- Denmark allows limited authorization for 18 months, with residence requirements.
- Italy maintains a ENT requirement.

▪ **Mode 4- CSS and IP**

CSS: There is a marked improvement in most EU Members from an Unbound status for CSS under the Revised offer, to access under the Cariforum EPA. However, France has not undertaken any commitments and continues its 'Unbound' status. Other Key Members, including Austria, Belgium, Germany, Denmark, Spain, Italy, Netherlands and the UK, have undertaken commitments subject to the ENT requirement.

IP: This remain Unbound, i.e., no commitments have been taken.

2.51 **Potential Requests for the EU:**

Based on the discussion above, African countries could consider the following requests to the EU:

▪ **Mode 1 in Medical and Dental Services; Midwives Services and Services by Nurses, Paramedics and Physiotherapists**

Given the core interest of African countries in Mode 1, a request could be considered for opening Mode 1 in each of the services described above, in at least the Key Members, i.e., Austria, Belgium, Germany, Denmark, Spain, France, Ireland, Italy, Netherlands, Sweden and the UK. This could, in the long-run, open up possibilities of e-medicine type of activities.

▪ **Mode 3 for Medical and Dental Services**

While Mode 3 may be of limited interest for most African countries, based on the restrictions highlighted the following requests could be considered for submission to the EU:

- Austria could be asked to open Medical Services.
- Germany could be asked to remove ENT applicability.
- France should be asked to remove restrictions as to legal form, and allow legal forms as allowed for EU investors.
- A clarification should be sought from UK that manpower planning should not discriminate against foreigners seeking establishment.

▪ **Mode 4 for Medical and Dental Services**

Requests could be considered for removal of restrictions on Key Personnel, such as:

- Italy and Denmark should be requested to clarify the nature and duration of the residence requirement. This may however not be a major issue for Key Personnel,

who by very nature of their job description may not find it difficult to fulfil the residence requirement. Denmark should also be requested to clarify on the nature of authorization required for entry.

- Germany and France should be requested to remove their nationality requirement.
- Belgium should be requested that the same process as followed by nationals from EU Members, should be applicable for African professionals seeking entry as 'graduate trainees'. It should also be pointed out that the EU GATS Revised Offer does not comprise of any 'permission' requirement, and that this is a new requirement.

Requests for CSS and IP that could be considered, include:

- France should be requested to make commitments for CSS, since it is the only EU Member that does not allow CSS and IP.
- Belgium, Germany, Denmark, Spain, Italy, Netherlands and the UK should be requested to remove the ENT requirement for CSS, since the application of this test would undermine Mode 4 access.
- All EU Members should be requested to allow for IPs.

▪ **Mode 3 for Midwives**

France could be requested to remove restrictions as to legal form, and allow legal forms as allowed for EU investors.

▪ **Mode 4 for Midwives**

Requests for Key Personnel that could be considered include:

- Italy could be requested to remove residence requirement.
- France could be requested to remove nationality requirement and quota requirement.
- Belgium could be requested that the same process as followed by nationals from EU Members, should be applicable for professionals from African countries.
- Austria could be requested that experience requirements applicable should be of the same standard as for EU nationals, and that professionals from African countries should not be discriminated against.

Requests for CSS and IP along the following points could be considered:

- France could be requested to make commitments for CSS
- Austria, Belgium, Germany, Denmark, Spain, Ireland, Italy, Netherlands and the UK should be requested to remove the ENT requirement for CSS, since the application of this test would undermine Mode 4 access.
- All EU Members should be requested to allow for IPs.

▪ **Mode 3 for Services provided by Nurses, Physiotherapists and Paramedical Personnel**

Requests that could be considered include:

- France could be requested to remove restrictions as to legal form, and allow legal forms as allowed for EU investors.
- Austria could be requested to liberalize mode 3 for paramedics also.

▪ **Mode 4 for Services provided by Nurses, Physiotherapists and Paramedical Personnel**

Requests for Key Personnel that could be considered include:

- Austria could be requested to remove restrictions on paramedics. Austria could also be asked that professionals from African countries should be subject to the same experience requirements as EU nationals.
- Belgium and France could be requested to clarify the nature of authorization required for Graduate Trainees. They should be requested to revert to their position as in the Revised Offer wherein there was no requirement for specific authorization of a Graduate Trainee.
- Denmark could be requested to remove residence requirement. Clarification should be sought on nature of authorization, and removal of any discriminatory requirements.
- Italy could be requested to drop its ENT requirements.

Requests for CSS and IP:

- France could be requested for making commitments for CSS.
- Austria, Belgium, Germany, Denmark, Spain, Ireland, Italy, Netherlands and the UK could be requested to remove the ENT requirement for CSS, since the application of this test would undermine Mode 4 access.
- All EU Members should be requested to allow for IPs.

II.C. 2 COMPUTER AND RELATED SERVICES

2.52 The EC and several other countries have proposed an Understanding under the GATS in relation to ‘computer and related services’.¹⁵ This Understanding outlines the following components of ‘computer and related services’ as follows. These elements have also been incorporated into the section on ‘computer and related services’ under the Cariforum EPA:

“Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide any of the following or any combination thereof:

- consulting, adaptation, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;*
- consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for software¹⁶;*
- data processing, data storage, data hosting or database services;*
- maintenance and repair services for office machinery and equipment, including computers and*
- training services for staff of clients, related to software, computers or computer systems, and not elsewhere classified.”*

2.53 In relation to all the services identified above, the EC market is open. However, as discussed in the report on ITES services, submitted along with this report, there are several other aspects of the EPA, such as provisions and obligations in relation to data protection, which will need to be addressed while formulating requests to the EU¹⁷.

Nature of Commitments and Restrictions under Cariforum EPA and Potential Requests by African countries

¹⁵ Communication from Albania, Australia, Canada, Chile, Colombia, Croatia, the European Communities, Hong Kong China, Japan, Mexico, Norway, Peru, the Separate Customs Territory of Taiwan Penghu, Kinmen and Matsu, Turkey and The United States, TN/S/W/60, 26 January 2007. This document clarifies an important distinction between “computer and related services” that can “enable” a service; and the ‘core service’ that is enabled (e.g.: accounting, auditing and bookkeeping services, architectural services, medical and dental services, audiovisual services, educational services). It clarifies that ‘computer and related services’ does not cover commitments on the ‘core service’. The core service will be covered by the relevant description in the schedule of commitments. This means that to ensure computer enabled services in relation to a specific service, Mode 1 (i.e., cross-border supply) service commitments in relation to that service need to be analysed and understood clearly.

¹⁶ The term “software” may be defined as the sets of instructions required to make computers work and communicate. A number of different programmes may be developed for specific applications (application software), and the customer may have a choice of using ready-made programmes off the shelf (packaged software), developing specific programmes for particular requirements (customized software) or using a combination of the two.

¹⁷ For a comprehensive list of steps that could be considered in respect of ‘Computer and related services’, please refer to the paper on ITES

2.54 In relation to the Annex IV to the Cariforum EPA, no EU Member has specified restrictions in relation to Modes 1, 2 and 3; therefore there is no specific request that needs to be made. However, requests from African countries should highlight the need for assistance in putting in place legal frameworks in African countries, that can facilitate growth of IT-enabled services through Mode 1¹⁸, including legal frameworks for data protection and storage.

2.55 There are however certain restrictions in relation to Mode 4 for CSS and IP, that may need to be addressed in the requests being prepared by African countries. These include the following ENT requirements in Key Members:

- Italy has a ENT requirement for IPs
- Belgium has a ENT requirement for CSS except when annual wage is above that prescribed by law.
- Denmark has ENT requirement for CSS except when duration of stay is less than 3 months
- Austria and the UK have ENT requirements for both CSS and IP.

¹⁸ This has been discussed further in the report relating to ITES services submitted separately.

II.C.3 RESEARCH AND DEVELOPMENT SERVICES

- 2.56 The sector of ‘Research and Development Services’ comprises of:
- R& D Services on Natural Sciences;
 - R& D Services on Social Sciences and Humanities;
 - Interdisciplinary R& D Services
- 2.57 The most significant aspect of the EU-Cariforum commitments is that it allows for foreign service providers in privately funded research. Under EU’s GATS Revised Offer, the entire sector for Modes 1, 2 and 3, were left ‘unbound’, which means EU Members could impose any restrictions they deemed fit.
- 2.58 However, while there is improved access to R&D services market in the EU, lack of access to foreign nationals to publicly funded R&D could essentially nullify the development cooperation and related obligations under the Cariforum EPA. For example, this could limit the scope of implementation of Article 132 (f) of the Cariforum EPA, which refers to the obligation of the parties to encourage, develop and facilitate cooperative research and development activities in science and technology between the Parties, as well as to develop lasting relations between the Parties’ scientific communities. Access for African R&D professionals to state-sponsored R&D activities, could be an important way in which to implement Article 132(f). This aspect may therefore have to be reconsidered.
- 2.59 In relation to the specific commitments made by EU Members, an analysis of the Cariforum EPA reveals the following:
- **Modes 1, 2 and 3:** Improved commitments under the Cariforum EPA, as compared to the EU Revised Offer, as discussed above, allows foreign service providers in privately funded R&D activities.
 - **Mode 4:** EU Commitments under the Cariforum EPA reveals substantial improvements over the EU Revised Offer in terms of:
 - No restrictions for Key Personnel. However, this has to be read in the context of Mode 3, which does not provide access to publicly funded research. Access to Key personnel will therefore be limited only to Mode 3 establishments that are privately funded.
 - CSS and IP are allowed for R&D services. This is however subject to the condition for all EU Members, except UK and Denmark, that there has to be a ‘hosting agreement’ with an ‘approved’ EC research organization. This is required to meet the conditions of EC Directive 2005/71/EC. This Directive has clear and transparent provisions on approval of the research organization and also ensures equal treatment for researchers who hold residence permits, with nationals in respect of (a) recognition of qualifications; (b) working conditions, pay, dismissal, etc., and (c) social security. These principles under EC law could hold benefits for African service providers. However, the residence requirements required under the Directive would need to be assessed with the duration of stay contemplated for CSS and IP under the Cariforum

EPA, which is 6 months duration in any 12-month period. Compliance with the Directive should not become a hindrance for CSS and IP.

- Denmark also specifies a ENT requirement.

2.60 Potential Requests for Consideration

(i) **Modes 1, 2 and 3:** African countries should consider requesting the EU to remove the restriction on publicly funded R&D, and enable funding access for entities and nationals from African countries. This could be a significant vehicle in which the objectives of Article 132 (f) of the EPA, to encourage cooperative research in science and technology, could be achieved.

(ii) **Mode 4:** Requests in respect of CSS and IP that could be considered include:

- Denmark could be requested not to make CSS and IP access subject to ENT.
- A clarification should be sought regarding EC Directive 2005/71/EC, which EU Members have specified as requiring compliance for entry of CSS and IP. The substantive principles of the EC Directive, as discussed in para 2.58 above, seem to hold benefits for foreign service providers. However, the residence requirements required under the Directive would need to be assessed with the duration of stay contemplated for CSS and IP under the Cariforum EPA, which is 6 months duration in any 12-month period. A clarification in this regard may be sought from the EU, in order to ensure that compliance with the EC Directive should not, in effect, hinder access for CSS and IP.

II.C.4 COMMUNICATION SERVICES (INCLUDING POSTAL, COURIER, TELECOMMUNICATION AND AUDIOVISUAL SERVICES)

- 2.61 This sector comprises of Postal and Courier Services, Telecommunications Services and Audio-visual Services. As discussed earlier in this report, Audio-visual Services has not been liberalized by the EC either under GATS or any of the FTAs that the EU has entered into so far. Elements of Audio-visual services such as ‘film co-production’ has been dealt with under the Protocol on Cultural Cooperation under the Cariforum EPA. This will be discussed later in Part III of this report.
- 2.62 The Audio-visual service sector being a highly sensitive sector within the EU, it may not serve much of a purpose to structure a request on this sector. Entertainment services (other than audio-visual), has been partially liberalized within the EU, as will be discussed in part II.C.8 of this report. It may be advisable at this stage, to structure requests on the elements regarding entertainment services and the Protocol on Cultural Cooperation.
- 2.63 The requests relating to Postal and Courier, and Telecommunications services are dealt with below.

A. Postal and Courier Services

- 2.64 Before commencing on a comparison of EU’s offer under its GATS Revised Offer and its commitments under the Cariforum EPA, it would be relevant to examine the provisions of the Cariforum EPA dealing with ‘Courier Services’. The Cariforum EPA comprises of a separate chapter on ‘Courier Services’, which specifies the regulatory framework for this sector. The elements of the regulatory framework specified include the following elements: (i) licensing; (ii) specification of universal service obligations; (iii) regulatory framework for anti-competitive practices; and (iv) independence of the regulator.
- 2.65 Each of the above elements are to be implemented by all EPA parties, which will mean that if the EPA with African countries contains these provisions, they would be obliged to enact a law comprising of these provisions. In this regard, some of the main elements that need to be considered by African countries include the following:
- (i) The status of the courier services market, and the existing regulatory framework in African countries will need to be assessed.
 - (ii) Regulatory framework relating to competition and prevention of anti-competitive practices.
 - (iii) Nature of the regulator, and whether it is an independent regulator.
 - (iv) Criteria for licensing of service providers.
- 2.66 If countries in Africa do not as yet have a law on the aspects enumerated above, then undertaking commitments of the nature proposed in the Chapter on Courier Services may be too premature. Appropriate language may then need to be suggested which recognizes that given the evolving nature of the law, there would be a transition period before the relevant provisions of the EPA come into effect. The chapter should also comprise of concrete obligations on the EU to provide training, capacity building and technical

assistance in order to enable enactment and implementation of an appropriate legal framework.

2.67 Another aspect that one would need to be cognizant of is that EU's preference is to introduce a chapter on both 'Postal and Courier' services; although the chapter in the Cariforum EPA deals only with 'Courier services'. This is because the Cariforum countries have not made any commitments on 'postal' services. Postal services in most countries are a public monopoly. African countries would need to consider this aspect in their negotiations as well, in the event EU insists on a chapter covering regulatory framework for both 'Postal and Courier' services.

2.68 *Schedule of Commitments by the EU:*

With regard to EU's commitments in the Postal and Courier sector, there are no restrictions with regard to Modes 1, 2 and 3. Mode 4 is however Unbound, i.e., no commitments have been made.

2.69 **Potential Requests to the EU:**

- **Chapter on Courier Services:** As discussed above, if African countries do not as yet have a law regulating courier services, then undertaking commitments on the nature of regulatory requirements proposed in the Cariforum EPA's Chapter on Courier Services may be too premature. The EC could be requested that a provision on transition period should be included before the relevant provisions of the EPA come into effect. The chapter should also comprise of concrete obligations on the EC to provide training, capacity building and technical assistance in order to enable enactment and implementation of an appropriate legal framework.
- **Schedule of Commitments:** As indicated above, Modes 1, 2 and 3 are open; whereas Mode 4 for CSS and IP is not in the EC Schedule. While considering a request on this aspect, African countries would need to assess whether Mode 4 in Courier services would be of potential interest.

B. Telecommunication Services

2.70 These services do not cover the economic activity consisting of the provision of content which requires telecommunications services for its transport. They also do not include on-line information and/or data processing (including transaction processing), which are to be found under Computer related services, discussed in Part II.C.2 of this report. Telecommunication services include voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services and mobile and personal communications services and systems.

2.71 As is seen below and in Part II.C.2, both telecommunication services, and on-line information and data processing, are open sectors in the EU.

2.72 However, there are other obligations to be considered with regard to Telecommunication services. The Cariforum EPA, as in the case with several other recent

FTAs proposed/entered into by the EU, has a chapter on regulatory issues governing telecommunication services. These principles have been drawn from the GATS Telecom Reference Paper that was proposed during the GATS discussions in 1996 and embodies several regulatory principles that WTO Members could consider binding into their schedules. These broadly pertain to the following areas:

- *Safeguards to protect against anticompetitive practices by major suppliers;*
- *Interconnection to PTTNS under non-discriminatory terms and conditions;*
- *Non-discriminatory and competitively neutral universal service requirements;*
- *Transparent licensing criteria;*
- *Independent regulators; and*
- *Non-discriminatory allocation of scarce resources, including frequencies, numbers, and rights of way.*

2.73 The GATS Reference Paper uses broad principles, and leaves open the flexibility of implementation to the countries. The Cariforum EPA however, highlights several aspects that place more concrete obligations on the signatory parties, with reference to the nature of their regulatory regimes. In fact some of the principles proposed in the Cariforum EPA go beyond regulatory regimes of several countries that have adopted the GATS Reference Paper. Some of the aspects stated in the Cariforum EPA are in fact currently being negotiated in GATS Working Party on Domestic Regulations.

2.74 African countries that are at a nascent stage of liberalization of telecommunication services, would therefore need to understand the exact compatibility of their regulatory regime with EU's requirements on Telecommunication regulations, as required under the Cariforum EPA. Some of the key regulatory aspects of the Cariforum EPA's Telecommunications chapter, which African countries would need to consider carefully, include the following:

- (i) *Nature of Independent Regulatory Authority for telecommunications:* Whether there is an Independent Regulator that is distinct from any supplier of telecom services, including the state; whether it provides the right for appeal.
- (ii) *Licensing of Telecom Services:* Whether telecom services is privatised and the nature of licensing provided to private players; are there restrictions on number of players. The Cariforum EPA for instance, states that provision of telecom services shall be based merely on 'notification', 'as much as possible'¹⁹. The GATS Reference Paper on the other hand, recognized that each country can have licensing regimes and only required licensing criteria to be transparent.
- (iii) *License Fees:* The Cariforum EPA mentions that licensing fees shall not exceed "administrative costs incurred in the management, control and enforcement of applicable licenses."²⁰ very often may not be practicable in the context of licensing regimes based on fixed fees or revenue sharing arrangements. This requirement also goes beyond the GATS Reference Paper.
- (iv) *Competitive Safeguards:* Having a mechanism to regulate competition and ensuring access to essential facilities, is another requirement.
- (v) *Interconnection:* The Cariforum EPA works on the premise that inter-connection can be commercially negotiated. This may however not be the case in all regulatory

¹⁹ Article 96(1), Cariforum EPA.

²⁰ Article 96(3)(d), Cariforum EPA.

regimes where there is regulatory oversight. This requirement also exceeds the GATS Reference Paper requirement, and will need to be considered against the prevailing regulatory principles in each African country.

2.75 The answer to these issues will determine the extent to which African countries can commit to the regulatory framework for telecommunications under the EPA.

2.76 Schedule of Specific Commitments on Telecom by the EU:

- The major change between EU's Revised GATS Offer and its Cariforum Schedule, is that it has included 'satellite broadcast transmission' services in its commitments. Only Belgium has not committed to liberalization of satellite broadcasting.
- The biggest restrictions are in Mode 4, which, as in the GATS Revised Offer, remain Unbound in the Cariforum Schedule.

2.77 **Potential Requests to the EU**

African countries could consider requests on the following aspects, depending on their interests and nature of their regulatory regimes:

- **Chapter on Telecommunication Services in the EPA:** As explained above, if there is an absence of synergies between the mandate of the Cariforum EPA's chapter on telecommunications and the legal framework in African countries, then African countries could consider the following:
 - i. A request to the EC that they should have the flexibility to adopt regulatory regimes for telecommunications, rather than have onerous commitments as proposed in the chapter on telecommunications under the Cariforum EPA.
 - ii. African countries could also consider proposing that the benchmark for the regulations should be the more flexible approach of the GATS Reference Paper on Telecommunications, and not the more stringent provisions of the Cariforum EPA.
 - iii. If the above approach is not acceptable to the EC, then African countries should consider suggesting appropriate language regarding phased implementation of the provisions and longer time period for implementing its obligations. There should also be a clear commitment that the EC would provide technical and financial assistance to implement the proposed legal framework.
- **Schedule of Commitments:** As indicated above, Modes 1, 2 and 3 are open; whereas Mode 4 for CSS and IP is not in the EC Schedule. While considering a request on this aspect, African countries would need to assess whether Mode 4 in Telecommunications would be of potential interest.

II.C.5 EDUCATIONAL SERVICES

2.78 The 'Educational Services' sector comprises of the following sub-sectors:

1. Primary Education Services
2. Secondary Education Services
3. Higher Education Services
4. Adult Education Services
5. Other Education Services

2.79 There could be potential interest for African countries in these sectors. The EU Revised Offer had several Member-specific restrictions in all the sectors. Restrictions under the Cariforum EPA are fewer. In fact, among the Key Members, restrictions can be seen only in respect of:

- **Mode 1:**
 - a. No commitments have been made in respect of Mode 1 by Austria, France, Italy and Sweden, for Primary, Secondary and Higher Education Services.
 - b. Mode 1 in Adult Education services is however possible in all Members, except for Austria, which has retained a right to impose restrictions on Adult education by means of radio or television broadcasting.
 - c. 'Other Education Services' is unbound for most EU members, which means they have a right to impose restrictions.
- **Mode 2:**
 - (a) There are no restrictions in key members, except for Austria and Sweden in respect of Higher Education.
 - (b) Austria has retained a right to impose restrictions on Adult education by means of radio or television broadcasting.
 - (c) 'Other Education Services' is unbound for most EU members, which means they have a right to impose restrictions.
- **Mode 3:**
 - (a) Mode 3 is allowed in most EU Members for Primary, Secondary, Higher and Adult Educational services, subject to grant of a concession.
 - (b) Mode 3 is Unbound for Higher Educational Services in Austria; and for all sub-sectors for Sweden.
 - (c) Spain and Italy have requirements for a 'Needs' test for opening private universities, and a Parliamentary intervention is required in this regard.
 - (d) Mode 3 is Unbound for 'Other Educational services' in practically all EU Members.
- **Mode 4:**
 - (a) CSS is allowed only for Higher Educational Services under Article 83(2) of the Cariforum EPA. However, EU's Schedule of Commitments for CSS and IPs, specifies that 25 of the EU Members, including all the Key Members of specific trading interest for African countries, except France, are not 'binding' their commitments; in other words, it would be open for them to specify restrictions. In the absence of a clear specification that the term 'Unbound' refers only to IPs, it would seem to imply that both CSS and IPs are Unbound. France has specified that it would allow CSS and IPs only for 'University

Professors', subject to the requirement of a contract with a University in France.

- (b) IPs are not allowed for any of the Educational Services under Article 83 of the EPA.
- (c) Key personnel are allowed in respect of sectors where Mode 3 is allowed by EU Members in respect of Primary, Secondary, Higher, Adult and Other Educational services. However, Nationality requirements are applicable in France and Italy for Primary, Secondary and Higher Educational services; and in Denmark for Higher Educational services. Nationality requirements in effect nullify any access for foreign service professionals and make the commitment meaningless.

2.80 The EU Revised Offer allowed for private participation only in privately funded educational services. The Cariforum EPA however has an overall qualifier for all Modes and all sub-sectors of Educational Services, allowing for participation of private operators in the "educational network", subject to grant of concession. The term "educational network" is not defined. This could therefore mean both private and publicly funded education. A clarification regarding this, as well as the procedure for obtaining such concession and terms and conditions of such concession, would need to be ascertained from the EU.

2.81 Potential Requests for the EU:

Based on a review of the restrictions that have been discussed above, African countries could consider incorporating the following in a request to the EU:

- (i) Clarification on whether both private and publicly funded educational services would be considered as part of the 'educational network' in respect of which a concession is required, needs to be sought from the EU.
- (ii) The procedure for obtaining such concession (whether there is a EU level authority or a Member-specific authority), and terms and conditions for the same, needs to be clarified.
- (iii) Keeping in view that the primary interest for African countries may be in Modes 1 and 4, the following requests to the EU could be considered:
 - (a) Mode 1 related commitments could be requested from Austria, France, Italy and Sweden for Primary, Secondary and Higher Educational Services.
 - (b) Austria should remove restrictions on broadcasting of 'adult education services' through radio and TV channels, and treat African service providers on par with EU service providers.
 - (c) EU should be requested to allow Mode 1 in 'Other Educational Services'.
 - (d) EU Members should be asked to explain the status of 'Unbound' for CSS in Higher Educational Services in Annex IV.d of the Cariforum EPA, when Article 83(2) of the EPA seems to indicate that CSS are allowed in this sector.
 - (e) Access for CSS and IP should be requested in all the sub-sectors under 'Educational services', i.e., Primary, Secondary, Higher, Adult and Other Educational services.
 - (f) France, Italy and Denmark should be requested to remove nationality requirements for Key Personnel.

II.C.6 FINANCIAL SERVICES

2.82 The Cariforum EPA has a separate chapter on ‘Financial Services’, that mirrors the GATS Annex on Financial Services in most aspects, except for the definition of ‘new financial service’. This definition has been drawn from the GATS Understanding on Financial Services. The Understanding can be ascribed to voluntarily by GATS members and commits those states to deeper and more detailed market liberalization than the GATS alone. One such element is liberalization of ‘new financial services’- defined as financial services including services related to existing and new financial products. The parties to the EPA are required to automatically provide access to a foreign financial service provider to market a new financial product that such party may allow a domestic financial service supplier to provide. Article 106 of the EPA does allow regulating such providers through an ‘authorization’. However, such authorization cannot result in denial, except for prudential reasons²¹. The main concern with ‘new financial services’ is that it may curtail sovereign scrutiny of new financial products, by making access open to any service provider. African countries may therefore want to carefully examine committing to liberalization of new financial services. Language changes to the EPA may be considered to the effect that new financial services and products will be subject to the regulatory regime applicable to such services and products.

2.83 The other main issue in the EPA chapter on Financial Services that is GATS-plus, is the provision on ‘Data Processing’. The provision obligates both EU and Cariforum states to adopt ‘adequate’ safeguards to protect privacy, in particular with regard to transfer of personal data. This provision will require putting in place regulatory mechanisms to ensure privacy and protection of personal data. It is possible that the EU may want to assess ‘adequacy’ of the regulatory mechanism on the basis of how a regulatory regime matches up to its own. African countries will need to carefully evaluate the extent to which their existing regulatory regime protects privacy and personal data, and whether they can commit to such an obligation at this stage. Options that need to be considered, include a phased implementation of the obligations on data processing, and training, capacity building and financial assistance from the EU in order to implement these obligations. Regulatory regimes on data protection will be critical both for attracting foreign investment in financial services into Africa, and for African service providers to potentially provide financial advisory services, or data processing in relation to financial data through Mode 1.

2.84 Scheduling commitments on Financial Services involves making commitments under two broad areas: (a) Insurance and Insurance-related activities; and (b) Banking and other Financial Services.

2.85 There are no substantial changes in EU’s commitments in Financial Services under its GATS Revised Offer and the Cariforum EPA, except for the following:

- **Mode 1 in Banking and Financial Services:** Under The EU Revised Offer, Key Members including Austria, Germany, Denmark, Spain, France, Netherlands, Sweden and the UK, have not scheduled any restrictions. Mode 1 under the Cariforum EPA however specifies that Mode 1 is Unbound (i.e., any restrictions

²¹ Article 106, EPA

can be imposed), except for *provision of financial information and financial data processing and for advisory and other auxiliary services*. In practice, African countries may be most interested in the nature of activities specified in the exception, i.e., financial data processing, and advisory and auxiliary services, each of which can be delivered as an IT-enabled service under Mode 1. However, the EU could be asked why Mode 1 in general is more restrictive under the Cariforum EPA than under the EU Revised Offer.

- **Modes 1 and 2 in Insurance and Insurance-related services:** There are restrictions relating to kinds of direct insurance of risks and underwriting that can be done cross-border, which are maintained in all Key Members. From the perspective of African countries however, the aspects that are likely to be of more interest include insurance related advisory services and data processing, which can be potentially be developed as IT enabled services. The existing restrictions may therefore not be of much concern.
- **Mode 3** restrictions in both Banking and Insurance, include licensing requirements, and legal forms for establishment. Mode 3, as such, may be of limited value for African countries. Even for firms seeking entry into the EU market, the specified restrictions in themselves may not constitute significant barriers to access. However, what for instance, banks in developing countries like India, often find is that multiple levels of domestic regulations in EU members, and requirements such as diverse capitalization norms and tax rates, often act as barriers to entry. African countries with interest in Mode 3 would need to assess from their industry representatives and services providers, the nature of restrictions that they face in practice, and structure their requests accordingly.
- **Mode 4** relating to CSS and IP is not committed by the EU with respect to financial services. This is another aspect, where, depending on the interest of service professionals from African countries, access to the EU may be requested. With regard to Key Personnel, Mode 4 related commitments have improved from that under the EU Revised Offer. Under the latter, Mode 4 for Key Personnel was unbound for several members. The Cariforum EPA provides access, subject however, to residence requirements in Austria and Italy. Residence requirements for Key Personnel, however, in themselves may not constitute restrictive criteria, since such personnel typically move to the foreign jurisdiction to stay for a close to 12 months or more.

2.86 **Proposed Requests to the EU**

Based on the above analysis, proposed requests to the EU could include the following:

(i) New Financial Services: Any separate chapter on Financial Services under the proposed EPA would need to have language to the effect that regulatory controls over new financial services and products would be applicable, including specific authorizations and terms and conditions qualifying such authorizations.

(ii) Data Processing: Provisions on Data Processing in relation to Financial Services would need to reflect the following principles: (a) There will be a phased implementation of these provisions; (b) EU shall provide technical and financial assistance in order to formulate and implement a regulatory regime for protection of data.

(iii) Mode 1 in Banking and Financial Services:

Mode 1 under the Cariforum EPA is Unbound for several members including Austria, Germany, Denmark, Spain, France, Netherlands, Sweden and the UK, except for provision of financial information and financial data processing and for advisory and other auxiliary services. This position is more restrictive than under the EU Revised Offer. The rationale for this revised position needs to be sought from the EU.

(iv) Mode 4: Commitments for CSS and IPs may be sought, depending on the interests of African countries in respect of movement of financial service professionals.

II.C.7 TOURISM AND TRAVEL RELATED SERVICES

2.87 The sector of ‘Tourism and Travel Related Services’ comprises of the following sub-sectors, each of which could be of potential interest for African countries, and will be discussed separately.

- A. Hotels, Restaurants, Catering (excluding catering in air transport services)
- B. Travel Agencies and Tour Operator Services, and
- C. Tourist Guide Services

2.88 In addition to the sectoral commitments and restrictions, another unique feature of the Cariforum EPA is the separate section in the EPA focusing on ‘Tourism services’. There are several provisions on development cooperation, technology transfer and technical assistance, which could potentially benefit signatory countries. Mechanisms to evaluate implementation of these provisions, should also be built into the EPAs for African countries, in order to make them more effective.

A. Hotels, Restaurants, Catering (excluding catering in air transport services)

2.89 There has not been any substantial improvement between EU’s Revised Offer and its Cariforum schedule, except for removal of a few restrictions in some of the Key Members in Mode 3.

2.90 With regard to each Mode of supply, following is an overview of the main restrictions that have been specified by the EU:

- **Mode 1:** Mode 1 is unbound in all of the Key Members of specific interest for African countries. Catering however has no restrictions, subject however to the overall sectoral exclusion of catering in air transport services.
- **Mode 2:** There are no restrictions in Mode 2.
- **Mode 3:** In Mode 3, Italy continues its ENT requirement for bars, cafes and restaurants.
- **Mode 4:** is allowed only for Key Personnel linked to a Mode 3 presence. CSS and IPs are not allowed.

B. Travel Agencies and Tour Operator Services

2.91 The only improvement from the EU Revised Offer is removal of an authorization requirement in Belgium, linked to whether the entity has a ‘permanent base’, prior to setting up Mode 3 presence.

2.92 **Modes 1 and 2:** With regard to Modes 1 and 2, there are no restrictions in most EU Members, including all Key Members.

2.93 **Mode 3:** There are no restrictions in any Member has been specified.

2.94 **Mode 4:** Mode 4 access for CSS is specified in Article 83(2) of the Cariforum EPA. However, Key Member states have specified several restrictions including the following for both CSS and IPs:

- Belgium and Denmark have specified ENT requirements.
- Ireland has not made any commitments, except to allow for access for tour managers.

C. Tourist Guide Services

- 2.95 There have been a few improvements between the EU Revised Offer and the EU Cariforum Schedule, the principal one being that Tourist Guides are allowed entry as CSS under the EU Cariforum EPA. However several restrictions apply, as will be discussed below.
- 2.96 **Mode 1:** Mode 1 is open in all Key Members, except for Italy which has retained the right to impose restrictions.
- 2.97 **Mode 2:** There are no Mode 2 related restrictions by any EU Members.
- 2.98 **Mode 4 for Key Personnel:** With regard to Mode 4- Key Personnel, nationality requirements have been specified by Spain, France and Italy, which are of specific trading interest for African countries.
- 2.99 **Mode 4 for CSS and IP:** As specified earlier, CSS access is allowed for Tourist Guides. Annex IV.d of the Cariforum EPA however specifies ENT requirements by most EU members, including all the Key Members. Additionally, Spain and France have specified that they are 'Unbound', i.e., they retain the right to impose any kind of restrictions. This would in effect nullify the EPA provision that CSS access is allowed.

2.100 Proposed Requests to the EU

Based on the analysis above, African countries could consider the following requests in respect of Tourist Guide Services:

- (i) Mode 1: Italy could be requested to commit to Mode 1 access.
- (ii) Mode 4 for Key Personnel: Spain, France and Italy could be requested to remove their nationality requirements.
- (iii) Mode 4 for CSS: EU Members should be requested to remove ENT requirements for CSS. Spain and France should be requested to provide access to CSS under a binding commitment.
- (iv) Mode 4 for IP: All EU Members should be requested to allow access for Tourist Guides as both CSS and IP.
- (v) Strengthening section on Tourism Services under the EPA: The section on Tourism services under the EPA would need to be strengthened through appropriate language that allows for monitoring of the implementation of the provisions dealing with technology transfer, technical assistance and development cooperation.

II.C.8 RECREATIONAL, CULTURAL AND SPORTING SERVICES (OTHER THAN AUDIOVISUAL SERVICES)

- 2.101 This service sector comprises of the following sub-sectors:
- A. Entertainment Services (including Theatre, Live Bands, Circus and Discotheque services)
 - B. News and Press Agencies
 - C. Libraries, Archives, Museums and Other Cultural Services
 - D. Sporting
 - E. Recreation and Beach Services
- 2.102 Among these, the sub-sectors which are likely to be of interest for African countries, are:
- “A: Entertainment Services”;
 - “C” which includes “Other Cultural Services”;
 - “D: Sporting services”, and
 - “E: Recreation Services”.
- 2.103 In general, there is not much of an ‘improvement’ in these sub-sectors over and above EU’s Revised Offer. However, the unique feature of the Cariforum EPA was the Protocol on Cultural Cooperation, which has been discussed in Part III of this report, which provides access to artists and cultural professionals, comprising of *“artists, actors, technicians and other cultural professionals and practitioners involved in the shooting of cinematographic films or TV programmes, other cultural professionals and practitioners such as visual, plastic and performing artists and instructors, composers, authors, providers of entertainment services and other similar professionals and practitioners involved in cultural activities such as the recording of music or contributing an active part to cultural events such as literary fairs.”* Access under the Cultural Cooperation Protocol, as will be discussed in Part III, however, does not result in ‘service delivery’ for remuneration; instead the purpose of the Protocol is limited to promoting cultural exchanges.
- 2.104 The following analysis provides an overview of the limitations in EU’s scheduling of the sub-sectors identified above, and the potential requests that African countries could consider.

Entertainment Services

- 2.105 The sub-sector titled ‘Entertainment Services’ has been substantially opened up for Modes 3 and 4 the first time under the Cariforum EPA. The EU has not extended this to any other trading partner so far, although it does have similar liberal offers in its GATS Revised Offer. The EC has however not made any commitments under Modes 1 and 2, which severely limits any possibility of cross-border supply of services, including delivery of entertainment content through IT enabled services. Even with regard to Mode 4, where entertainment services has been opened for CSS, there are restrictions in the form of qualification requirements, and economic needs tests.
- 2.106 The broad trends in relation to commitments made in relation to Entertainment Services under the Cariforum EPA, can be summarized as follows:

- Modes 1: Cross-border supply of services through Mode 1 remains Unbound in several Key Members, such as Belgium, Denmark, Germany, Spain, France, Italy, Netherlands and the United Kingdom.
- Mode 2: Open in most EU Members.
- Mode 3: There are no restrictions in the Key Members
- Mode 4: Caribbean artists, musicians, and other cultural practitioners and their crews who are registered as businesses will be able to send their members or employees to the EU. Supply of entertainment services under the category of contractual service suppliers (CSS) is allowed in most member states, except for Belgium. Additionally, all other Key Members have made CSS entry subject to qualifications requirement. This in effect nullifies Article 83(2)(c) of the Cariforum EPA, which states that qualification requirements will *not* be applicable in the context of entertainment services. In fact Austria states that ‘advanced qualifications’ may be required. Economic needs test is also applicable by all Key Members.

Libraries, Archives, Museums and Other Cultural Services

2.107 This sector remains fairly restricted in most EU Members- which is the same position as it was under EU’s Revised Offer. In respect of the Key Members, following are the general trends:

- Modes 1 and 2: Key Members which have not taken any commitments on Modes 1 and 2 include: Belgium, Denmark, Germany, Spain, France, Ireland, Italy, Netherlands, Sweden and UK.
- Mode 3: Unbound across most EU Members; i.e., no commitments have been taken. Austria however allows involvement of foreign service providers in libraries, museums and other cultural services, subject to licensing.
- Mode 4: No commitments have been taken in respect of Mode 4. The main impact of this in respect of African countries is likely to be felt in respect of the miscellaneous category of ‘other cultural services’.

Sporting Services

2.108 This sector has no restrictions in Key Members in respect of Modes 1, 2 and 3. However, no commitments have been taken for CSS and IPs.

- Modes 1 and 2: Only Austria has not undertaken commitments in respect of skiing and mountain guiding services. Other EU Members have not specified any restrictions.
- Mode 3: This is Unbound in Austria for skiing and mountain guiding services. Mode 3 is Unbound in many of the Eastern EU Members. Other EU Members have not specified any restrictions.
- Mode 4: No commitments have been taken in respect of CSS and IP for sporting professionals, which may of potential interest for African countries. In those members where Mode 3 is open, Key Personnel would have access to the EU market. This is an improvement over EU’s Revised Offer. However, given limited interests for African countries in Mode 3, this does not represent any gain for African countries.

Recreation & Beach Services

2.109 This sector is liberalized for most EU Members for Modes 1, 2 and 3. However, CSS and IP are not allowed.

- Modes 1, 2 and 3: There are no restrictions specified by any EU Member. This is an improvement over the EU Revised Offer wherein a few Members had maintained restrictions.
- Mode 4: Key Personnel linked to Mode 3 commercial presence are allowed. However, no commitments have been taken for CSS and IP, which may of potential interest for African countries.

2.110 **Potential Requests to the EU from African Countries**

Based on the above analysis, the following requests could potentially be considered by African countries:

i) Entertainment Services:

- (a) Key Members, such as Belgium, Denmark, Germany, Spain, France, Italy, Netherlands and the United Kingdom, could be requested to liberalize Mode 1 since African countries could potentially be interested in delivery of entertainment content through cross-border supply.
- (b) Belgium should be requested to make commitments for CSS, since this is the only EU Member that has retained the 'Unbound' status for CSS. Additionally, all other Key Members should be asked to remove the requirement that CSS entry is subject to qualifications requirement, since this in effect nullifies Article 83(2)(c) of the Cariforum EPA. Key Members should also be requested to drop the Economic needs test requirement for CSS.
- (c) All EU Members could also be requested to open up Entertainment Services to Independent Professionals from Africa, since it may not be possible in all instances to establish an employer-employee relationship between a entertainment service provider and a specific organization. Given the nature of the service, several service-providers engaged in entertainment services are likely to sub-contract work on an ad-hoc basis.

▪ Library, Museums and Other Cultural Services:

- a. Key members such as Belgium, Denmark, Germany, Spain, France, Ireland, Italy, Netherlands, Sweden and UK, could be requested to open Modes 1 and 2 for atleast the category of 'other cultural services'. Delivery of content pertain to this category through cross-border supply could be of potential interest for African countries.
- b. Key members may also be requested to liberalize Mode 3 for at least 'other cultural services'.
- c. Key Members may also be requested to consider allowing service providers in Mode 4, especially as CSS and IP, since these categories could be of interest for African countries.

▪ Sporting Services:

- a. Key members may be requested to consider allowing service providers in Mode 4, especially as CSS and IP, since these categories could be of interest for African sportspersons.

▪ Recreational, Park and Beach Services:

- a. Key members may be requested to consider allowing service providers in Mode 4, especially as CSS and IP, since these categories could be of interest for African sportspersons.

II.C.9 TRANSPORT SERVICES

- 2.111 In the sector relating to Transport Services, the sub-sectors of interest for African countries include:
- A. Maritime Transport
 - B. Air Transport, and
 - C. Services auxiliary to all modes of Transport [Special focus on Maritime & Air Transport]
- 2.112 Of the above, no commitments have been taken by EU Members in respect of Air Transport. Commitments have however been taken on Maritime, and Services Auxiliary to both Air and Maritime Transport. This is also clarified in Article 66 of the EPA which excludes national and international maritime transport services from the purview of the EPA. The only services in relation to air transport that are possible are: aircraft repair and maintenance, selling and marketing of air transport services, computer reservation systems services, and other ancillary services such as ground handling, airport management, etc.
- 2.113 Another point to be noted is that while the EU Revised Offer categorises Maintenance and Repair of Vessels and of Aircraft, as part of Services Auxiliary to Maritime and Air Transport respectively, the EU-Cariforum schedule categorises maintenance services as part of ‘Other Business services’.

EPA section on International Maritime Transport Services

2.114 Before examining EU’s schedule of commitments relating to Transport services, it is also necessary to examine the chapter in the Cariforum EPA pertaining to ‘International Maritime Transport Services’. Because of EU’s interest in Maritime Transport services, it has been proposing separate provisions under the EPA to govern principles relating to the regulatory framework for these services. Some specific aspects of the proposed section which may need closer scrutiny include the following:

- (a) Definition of ‘International Maritime Transport’: Typically, International Maritime Transport is understood to mean international maritime freight and passengers by sea-going vessels. This is how most WTO members have scheduled their GATS related commitments. However the Cariforum EPA definition of International Maritime Transport is worded as inclusive of ‘multi-modal transport operations’. ‘Multi-modal’ transport, in its literal sense, means several other transport sub-sectors, such as road, rail – who’s services are integral for maritime transport. EU’s intent seems to be ensure that a multimodal transport operator could be able to rent or lease lorries, railway trucks, barges, and related equipment, for inland cargo transport. However, multimodal transport involves various regulatory regimes, so that to cover this sector would entail dealing with services, sub-sectors and transactions (such as road and rail transport) which go beyond the maritime transport sector.

Issues relating to multi-modality within the regulatory regimes in each African country would need to be examined, to understand the implications of the definition for the existing legal framework in each country.

(b) Restrictions on Cargo-Sharing arrangements: Article 109(4) presents another potential concern which needs to be carefully scrutinized. It states that parties shall “*not introduce cargo-sharing arrangements in future bilateral agreements with third countries concerning maritime transport services... and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous bilateral agreements*”. This needs to be scrutinized by African states having cargo-sharing arrangements, or those which may potentially seek such arrangements with other countries.

In this regard, it is important to note that the EU-Chile FTA has an exception which states that cargo sharing to be allowed in circumstances where liner shipping companies would not otherwise have effective opportunity to ply for trade to and from the third country. Such a provision should be considered in the context of the EPA with African countries, provided this is an area of concern.

Maritime Transport

2.115 **Modes 1, 2 and 3**: There are no changes between the EU Revised Offer and the Cariforum EPA. Both require that authorization is required for feeder services in several EU states, including Germany, France, Spain, Italy and Sweden among the Key Members. In most EU Members, including all Key Members, restrictions can also be placed on establishment of a company for operating a fleet under the national flag of the state of establishment.

2.116 **Mode 4-Key Personnel**: There is an EU-wide condition on nationality for the ship’s crew. This is a restrictive condition, since it effectively nullifies opportunity for any foreign service provider becoming part of a ship’s crew. Austria has specified an additional restriction regarding nationality for majority of the managing directors. For all other Key Personnel involved in maritime transport, there have been improvements from an ‘Unbound’ status, to a status of no restrictions.

2.117 **Mode 4- CSS and IP**: These categories of natural persons are not allowed.

Services Auxiliary to Maritime Transport

2.118 This includes a variety of services, including maritime cargo handling, storage and warehousing, customs clearance, maritime agency, maritime freight forwarding, rental of vessels with crew, pushing and towing services, and supporting services for maritime transport.

2.119 The EU has rationalised sector-specific restrictions in each of these areas, and the its annex under the EU-Cariforum EPA represents an improvised set of commitments with the following restrictions:

2.120 **Mode 1**: In respect of Mode 1,

- Whole of EU has retained the ‘Unbound’ status for customs clearance for container station and depot services.
- Most EU Members, including all Key Members maintain restrictions for maritime cargo handling services, storage and warehousing services and pushing and towing services, and for maintenance and repair of maritime transport vessels.

2.121 **Mode 2:** No restrictions have been maintained by any EU Member.

2.122 **Mode 3:**

- In most EU Members, including all Key Members, in respect of pushing and towing services, and supporting services for maritime transport, restrictions can be placed on establishment of a company for operating a fleet under the national flag of the state of establishment.
- Italy has reserved for itself the right to impose ENT for cargo-handling services.

2.123 **Mode 4 - Key Personnel:**

- Restrictive conditions pertain to Nationality requirement in the whole of EC for crews required for pushing, towing services and for supporting services for maritime transport.
- Austria has nationality requirement for majority of managing directors in any Mode 3 presence.
- Italy and Denmark have specified residency requirements.

2.124 **Mode 4- CSS and IP:** No commitments have been made.

Services Auxiliary to Air Transport

2.125 Commitments, with several specified restrictions, have been undertaken by the EU in respect of the following sub-sectors: Ground-handling services (including catering); Storage and Warehouse services; Freight Transport Agency Services; Rental of Aircraft with Crew; Sales and Marketing; Computer Reservation System; Airport Management and Services Auxiliary to Pipeline Transport of Goods other than fuel.

2.126 **Mode 1:**

- EU has maintained the ‘Unbound’ status (i.e., no commitments) in respect of: Maintenance and repair of aircraft; Ground-handling (except for catering services); and Airport Management.
- Sales and marketing and Computer Reservation system: EU has specified as a requirement ‘specific obligations for service suppliers operating computer reservation systems owned or controlled by air carriers’; the nature of such obligations however have not been specified.

2.127 **Mode 3:** Restrictions have been specified in relation to:

- Ground handling services: All of EU has qualified this as subject to the size of the airport, and that number of service providers can be limited based on airport size.
- Rental of aircraft with crew: Registration and Nationality requirements have been specified. In case of juridical persons, the requirements can be in the nature of nationality of directors and ownership of capital. Of these, nationality requirements could be problematic since this will restrict access for foreign owners of the aircraft.
- Sales and marketing and Computer Reservation system: EU has specified as a requirement ‘specific obligations for service suppliers operating computer reservation systems owned or controlled by air carriers’; the nature of such obligations however have not been specified.

2.128 **Mode 4:** No restrictions have been specified for Key Personnel related to Mode 3 commitments. No commitments have however been made in respect of CSS and IP.

2.129 **Potential Requests to the EU from African Countries**

Based on the above analysis, the following requests could potentially be considered by African countries:

Requests on EPA Provisions on Maritime Transport

- (i) **Multi-modal transport:** Use of the term ‘multimodal transport’ as part of the definition of ‘International Maritime Transport’ may need to be reconsidered since there may be distinct regulatory frameworks in African countries in relation to different modes of transport.
- (ii) **Cargo-sharing arrangements:** Article 109(4) prohibits existing and future cargo-sharing arrangements. This may need to be reviewed based on the interests of African countries. It is also important to note that EU’s FTA with Chile incorporates the following exception to the prohibition on ‘cargo-sharing arrangements’ where liner shipping companies would not otherwise have effective opportunity to ply for trade to and from the third country. Such a provision should be considered in the context of the EPA with African countries, provided this is an area of concern.

Requests on Maritime Transport

- (i) **Modes 1 and 3:** EU may be requested to clarify the nature of authorization required in the context of feeder services.
- (ii) **Mode 4- Key Personnel:** Nationality requirements for a ship’s crew may need to be removed, since this will effectively nullify opportunity for any foreign service provider becoming part of a ship’s crew. Additionally, Austria could be requested to remove nationality requirements for managing directors.
- (iii) **Mode 4- CSS and IP:** Requests to allow for CSS and IP may be considered depending on the level of interest in African service providers.

Requests on Services Auxiliary to Maritime Transport

- (i) Requests for removal of restrictions on Mode 1 in relation to customs clearance for container station and depot services, cargo handling, storage and warehousing services, and pushing and towing services, may be considered.
- (ii) Italy may be asked to remove ENT requirements for Mode 3.
- (iii) Nationality requirements in all of EU in respect of crews required for pushing, towing and supporting services for maritime transport, should be requested to be removed, since these requirements nullify the possibility of any foreign service provider becoming a member of such crew.
- (iv) Request for removal of Residency requirements in Italy and Denmark in relation to Key Personnel, may need to be considered. However, this may not be a pressing problem since Key Personnel, because of the duration of their stay, may be able to satisfy the residency requirement. A clarification may be sought in this regard.
- (v) Request for commitments in relation to CSS and IP may be considered.

Requests on Services Auxiliary to Air Transport

- (i) Request for allowing Mode 1 in relation to maintenance and repair of aircraft, as well as ground-handling and airport management, may be sought.
- (ii) A clarification may need to be sought from EU on the nature of ‘specific obligations for service suppliers operating computer reservation systems owned or controlled by air carriers’, in respect of Modes 1 and 3.
- (iii) Request for removal of nationality requirements for owners of an aircraft, and nationality requirements for directors of a juridical person owning an aircraft, may need to be considered.
- (iv) Request for commitments in relation to CSS and IP may be considered.

PART III: THE PROTOCOL ON CULTURAL COOPERATION- OPPORTUNITIES AND LIMITATIONS

- 3.1 Audio-visual, and all its sub-sectors, are excluded from EU's offer on Trade in Services. This is true of EU's GATS commitments, its Revised Offer and all other FTAs concluded by it. In effect this means that the following sub-sectors of audio-visual services are not in consideration :
- a. Motion picture and video tape production and distribution services
 - b. Motion picture projection service
 - c. Radio and television services
 - d. Radio and television transmission services
 - e. Sound recording
- 3.2 As discussed in Part II.C.8 of this Report, the EU is however open to Recreation, Sporting and Other Cultural Activities (not including Audio-visual) services, which includes:
- a. Entertainment Services (including Theatre, Live Bands, Circus and Discotheque services)
 - b. News and Press Agencies Services
 - c. Libraries, archives, museums and other cultural services
 - d. Sporting Services
 - e. Recreation and Beach Services
- 3.3 As discussed in Part II.C.8, there are several restrictions in these sectors. For instance, while supply of entertainment services (musicians, artists, cultural practitioners) under the category of contractual service suppliers (CSS) is allowed in most member states, EU members can subject entry to an assessment of 'qualifications' and economic needs tests.
- 3.4 The EU-Cariforum EPA also incorporates for the first time in any EU FTA, a specific Protocol on Cultural Cooperation, which the EU calls the Cultural Cooperation Approach for 'Cultural Services'. The Protocol is based on EU's new strategy to take steps towards implementation of UNESCO's 2005 *Convention on Cultural on Protection and Promotion of Diversity of Cultural Expressions* [UNESCO Convention]. The main premise behind EU's approach is that on audio-visual services, they are not prepared for any steps towards liberalization of the sector. However, they are willing to examine elements under the broad rubric of "cultural cooperation". The Protocol pertains to Artists and Cultural Professionals rendering 'Cultural Services'. However, it should be emphasized that the Protocol is *not* a substitute for any 'commitments' for market access in a service sector. It is, as it says, an attempt to promote 'cultural cooperation'.
- 3.5 The two key terms of the Protocol are defined as follows:
- *Cultural Services: Those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions²², irrespective of the commercial value they may have.*

²² The term "cultural expressions" used in the above definition is defined in the UNESCO Convention as: "those expressions that result from the creativity of individuals, groups and societies, and that have cultural content."

- *Artists And Cultural Professionals: Those who perform cultural activities, produce cultural goods or participate in the direct supply of cultural services. The definition covers artists, actors, technicians and other cultural professionals and practitioners involved in the shooting of cinematographic films or TV programmes. It also covers artists and other cultural professionals and practitioners such as visual, plastic and performing artists and instructors, composers, authors, providers of entertainment services and other similar professionals and practitioners involved in cultural activities such as the recording of music or contributing an active part to cultural events such as literary fairs, etc.*

3.6 The definition of 'Artists and Cultural Professionals' as seen above, is broad and can potentially cover professionals in all Audio-Visual sub-sectors. However, the Cultural Cooperation Protocol is not a substitute for any Mode 3 or Mode 4 access to the EU market. The Protocol clearly specifies that 'Artists and Cultural Professionals' should not:

- be engaged in selling their services to the general public or in supplying their services themselves,
- do not on their own behalf receive any remuneration from a source located within the EC Member where they are temporarily staying, and
- are not engaged in the supply of a service in the framework of a contract concluded between a legal person who has no commercial presence in the EC Member where the artist or other cultural professional or practitioner is temporary staying and a consumer in that host EC Member.

3.7 The language used in Article 3(1), of the Protocol seems to indicate a non-binding obligation on the parties whereby they 'shall endeavour to facilitate' such entry. It does amount to a legal commitment to allow entry for artists and cultural professionals. This language, for instance, is weaker than that used in the context of CSS and IP, wherein EU Parties 'shall allow supply of services into the territory of its Member states', under Article 83(2) and Article 83(3) of Cariforum EPA.

3.8 The Protocol however has several positive elements and these include:

- Cultural Exchanges and Dialogue
- Artists and Cultural Professionals can stay for up to 90-days in any 12-month period
- Technical Assistance from EC to the Cariforum countries in the development of their cultural industries, development and implementation of cultural policies, and in promoting the production and exchange of cultural goods and services.
- Audiovisual and Cinematic Cooperation
- Performing Arts: Professional exchanges and training
- Development of international theatre technology standards
- Cooperate in protection of sites and historic monuments

3.9 Another important element of the Protocol is its impact on audio-visual and cinematic cooperation between members of the EC and the Cariforum countries. It essentially designates that co-productions involving cooperation from both the EC and Cariforum countries will be treated as *European Work* for the purpose of EU regulations (the Audio-Visual Media Services Directive), based on an extremely liberal standard. A 'co-produced work' is designated as *European Work* which can avail of the benefits under the EU Audio-Visual media Directive on the fulfilment of the following conditions:

- The production companies shall be owned by a Member State of the EU or of the Cariforum or by nationals from these states;

- The managers of these companies shall have the nationality of a EU Member State or of a Cariforum State
- The financial contributions of the production companies of each zone shall **not be less than 20%** and not more than 80% of the total production cost.

3.10 The EU has not committed to such a liberal standard with any other third country; hence this can be seen to be an extremely major step forward. EU's new Audiovisual Media Services Directive (AVMSD) is expected to come into effect in 2009. The AVMSD states that in relation to "European Works", Members have the freedom to impose quotas on television programmes for such works. There is no limit on the maximum limit. By designating EU-Cariforum co-productions as "European Works" under the Protocol on Cultural Cooperation, the Cariforum EPA opens a wide range of possibilities for Cariforum states.

Analysis of the Cultural Cooperation Approach and Potential Issues for Consideration

3.11 As can be seen from the analysis above, the principles of cultural cooperation could be beneficial for cultural exchanges and creating exposure for cultural professionals and artists. However, except in the case of film co-production, they cannot result in any revenue generating service activity. This is because, as discussed in para 3.6 above, artists and cultural professionals cannot 'sell' their service or receive remuneration for the same. The value of the Protocol for artists and cultural professionals, however, is the opportunity for exposure into the EU market through cultural exchange, dialogue, professional training, etc. The provisions of the Protocol would also benefit actors, technicians and cultural professionals and practitioners engaged in shooting of films and television programmes.

3.12 In order to make the commitments stronger and legally binding under the Cultural Cooperation Protocol, and based on the discussions above, African countries could consider making the following requests in relation to the language used in the Protocol:

- (i) Article 3(1): Stronger verbiage could be considered committing that the parties "*shall allow entry and temporary stay into their territories of artists and cultural professionals*", instead of the current language which states "*shall endeavour to facilitate*".
- (ii) Separate Visa Categories: In order to facilitate entry under the Protocol, EU Member should be asked to put in place a distinct visa category, which would enable artists and cultural professionals to have freedom of movement across all EU Members, during the duration of their visa. The documentary requirements for such visa categories should also be clarified.
- (iii) No Qualification requirements and other restrictive criteria: The Protocol mentions in Article 3(1) that Members would allow access "in conformity with their "respective legislation"; however it does not mention what such regulatory requirements could be. It should be clarified that the only regulatory requirements that parties can impose on artists and cultural professionals, are measures referred to in Article 60(1) of the EPA, which refers to "*measures to regulate the entry or temporary stay of natural persons*

*of the other party in its territory, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided such measures are not applied in a manner so as to unduly impair the benefits accruing to the other party”.*²³

The Parties should commit to language which clearly states that they will not apply any regulations relating to qualification requirements, or licensing, or any other criteria such as numerical quotas or economic needs tests.

- (iv) Technical Assistance and Technology Transfer: The obligation on EU Members to provide technical assistance and technology transfer under Article 4 of the Protocol, may need to be strengthened. It currently reads as an ‘endeavour’. A joint monitoring committee may need to be considered to review and monitor the implementation of the provisions relating to technical assistance and technology transfer.
- (v) Co-produced Works: As discussed in paras 3.9 and 3.10 above, one of the significant and important provisions in the protocol is providing ‘co-produced’ works involving just 20% financial contribution from a Caribbean party, the status of *European Works* under EU regulations. This is significant because of the various benefits relating to telecast and distribution rights that Caribbean co-producers can avail of in Europe. This needs to be preserved under the African EPAs as well.

²³ This language reflects that used under the GATS Annex on Movement of Natural Persons, Clause 4.

PART IV: SUMMARY OF REQUESTS

- 4.1 The approach of Economic Partnership Agreements that the EU has been adopting for lesser developed and developing countries, holds several promises, as well as challenges. For African countries negotiating EPAs with the EU, the experience with the EU-Cariforum EPA holds several important lessons. This needs to be scrutinized closely, since it is likely that the EU will use a similar approach to the African EPAs.
- 4.2 There are certain over-arching challenges that the African countries need to be cognizant about. The most significant one being that there is no single 'internal market' for services in the EU, and there are a plethora of member-specific regulatory requirements. However, certain internal developments such as the EC Directives such as the recent Mutual Recognition Directive dealing with Mutual Recognition of professions, provides important pointers as regards the nature of professions in which Mutual Recognition Agreements between the EU and any third country, is more likely to succeed because of the steps within EU that have been taken to achieve internal harmonization.
- 4.3 African countries should also scrutinize and enhance their preparedness for the sectoral negotiations with the EU. In this regard, several restrictions in Key Members of specific trading interest for African countries (UK, Ireland, Netherlands, Sweden, Denmark, France, Belgium, Germany, Austria, Spain and Italy), has been highlighted and discussed in this report. As highlighted in the introductory section of this report and in Part II.C, based on the restrictions that appear either throughout the EU, or in specific Key Members, this report attempts to design comprehensive lists of requests.
- 4.4 These proposed requests, however, will need to be carefully considered by the Governments, industry associations and professional bodies of each African country, and appropriately modified based on the specific interests of each country. It is also likely that in several sectors, especially in relation to Mode 3 entry, the EU may have greater offensive interests with regard to the market in African countries. While structuring requests, African countries would need to prioritize what they want, anticipate what the EU may ask, and use certain aspects of the request to leverage better access in Modes 1 and 4 in sectors of interest. Cross-sectoral negotiations should form an integral part of discussions.

I MUTUAL RECOGNITION AGREEMENTS

- (i) At a minimum, African countries should consider requesting for MRAs in the sectors of Accounting, Architecture, Engineering and Tourism, as is the case in the Cariforum EPA. Additionally, they should also request for MRAs in the health sector related professions (doctors, nurses, midwives and pharmacists), since these professions are covered under EC's MR Directive. These are also important in order to translate into better Mode 4 access for CSS and IP within the health sector, which has been liberalized in the EU-Cariforum schedule.

- (ii) MRAs covering the art, crafts and industry sectors (which could benefit professionals working in recreation, sporting, transport, beautician services, restaurants, cafes, hotels, etc.), are also agreements that could be of potential interest for African countries. While MRAs with non-EU Members in this area is uncharted territory, it may well be worth exploring given the higher degree of regulatory convergence within the EU on this aspect.

II PROVISIONS RELATING TO THE REGULATORY PROCEDURES

In order to ensure ease of access to the EU market, the provisions in Article 87 of the Cariforum EPA dealing with 'Procedures' would need to be strengthened, to reflect the following principles:

- (i) EU Members could be requested to eliminate requirements relating to Residence, Nationality, ENT and Numerical Quotas for Mode 4 in all categories: ICTs, Graduate Trainees, CSS and IPs.
- (ii) Transparent procedures and strict timelines for evaluating licenses and certification of the other party's service provider;
- (iii) Procedures for fulfilling any shortcomings in an application;
- (iv) The concerned authority should provide reasons for any rejection of an application for recognition of qualifications.
- (v) Procedures for review of such provisions.
- (vi) If one of the Parties enters into an agreement for recognition of qualification and criteria in any service sector with a third party, it shall afford the other Party to the Agreement an opportunity to negotiate such principles as well.
- (vii) The Parties are required to consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing or certification of each other's service suppliers.

III MODE 4 RELATED REQUESTS

- (i) EU Members could be requested to eliminate requirements relating to Residence, Nationality, ENT and Numerical Quotas for Mode 4 in all categories: ICTs, Graduate Trainees, CSS and IPs.
- (ii) Mode 4 access for Independent Professionals in respect of the following services may be requested: Medical and dental services; Midwives services; Services by Nurses, Physiotherapists and paramedical personnel; Entertainment services (including recreational, cultural and sporting services); Educational Services (including, primary, secondary, higher and adult education services, and other educational services).

- (iii) Mode 4 access for Contractual Service Suppliers in respect of the following services may be requested: both privately and publicly funded 'higher education', as well as primary, secondary, and adult education services, and other educational services.²⁴
- (iv) Duration of Stay for CSS and IP: African countries should consider requesting for more liberal access and duration of stay for CSS and IPs. Based on the longer term access provided for Key Personnel, and using the broad themes of the Blue card scheme, African countries may consider requesting for longer duration of entry for ICTs, CSS and IPs, for a period that can extend up to 2 years, and which can be renewed.
- (v) Free mobility within the EU: Drawing on from the broad elements of the Blue Card scheme, another request that could be considered is that for ICTs, CSS and IPs, EU should not subject the service professional to separate approval procedures by each EU Member's authorities; and that once one EU Member allows entry by a service professional under Mode 4, such professional would have free mobility within the EU for the duration of the Mode 4 access.
- (vi) Another aspect that could be built into the request is that inherent in Mode 4 access, should be the right of access for the immediate family members of the concerned service professional.

IV REQUESTS PERTAINING TO HORIZONTAL RESTRICTIONS ON MODE 3

- (i) Public Utilities: A clarification could be sought on the nature of services that are considered 'public utilities' by each Member State.
- (ii) Access for Industrial, Commercial and Artisanal activities in Italy: Italy should be asked for a clarification on why specific authorization is required for Industrial, Commercial and Artisanal activities, what such activities comprise of, and nature of authorization required.
- (iii) Legal Entity Restrictions in Sweden: Request from African countries should be that these restrictions should not be made applicable at least in respect of the Key Sectors (the service sectors listed in Annexure 1 which are of specific trading interest for African countries). The reason why this is introduced only in the Cariforum EPA, and not in the EU GATS Revised Offer should also be asked.
- (iv) Investment Restrictions in France: The request to France should be that investment requirements are done away with and that investments from African countries are treated the same as investments from any other EC Member.
- (v) Real Estate Purchases in Spain and Ireland: Spain and Ireland should be requested to drawback restrictions on real estate purchases, to make this consistent with the EC Revised Offer.

²⁴ Currently under the Cariforum EPA, CSS entry is allowed only in respect of 'privately funded higher educational services'.

V REQUESTS IN RESPECT OF MEDICAL & DENTAL SERVICES; MIDWIVES SERVICES; SERVICES BY NURSES, PARAMEDICS AND PHYSIOTHERAPISTS

(i) Mode 1 in Medical and Dental Services; Midwives Services and Services by Nurses, Paramedics and Physiotherapists

Given the core interest of African countries in Mode 1, a request could be considered for opening Mode 1 in each of the services described above, in at least the Key Members, i.e., Austria, Belgium, Germany, Denmark, Spain, France, Ireland, Italy, Netherlands, Sweden and the UK. This could, in the long-run, open up possibilities of e-medicine type of activities.

(ii) Mode 3 for Medical and Dental Services

While Mode 3 may be of limited interest for most African countries, based on the restrictions highlighted the following requests could be considered for submission to the EU:

- Austria could be asked to open Medical Services.
- Germany could be asked to remove ENT applicability.
- France should be asked to remove restrictions as to legal form, and allow legal forms as allowed for EU investors.
- A clarification should be sought from UK that manpower planning should not discriminate against foreigners seeking establishment.

(iii) Mode 4 for Medical and Dental Services

(a) Requests could be considered for removal of restrictions on Key Personnel, such as:

- Italy and Denmark should be requested to clarify the nature and duration of the residence requirement. This may however not be a major issue for Key Personnel, who by very nature of their job description may not find it difficult to fulfil the residence requirement. Denmark should also be requested to clarify on the nature of authorization required for entry.
- Germany and France should be requested to remove their nationality requirement.
- Belgium should be requested that the same process as followed by nationals from EU Members, should be applicable for African professionals seeking entry as 'graduate trainees'. It should also be pointed out that the EU GATS Revised Offer does not comprise of any 'permission' requirement, and that this is a new requirement.

(b) Requests for CSS and IP that could be considered, include:

- France should be requested to make commitments for CSS, since it is the only EU Member that does not allow CSS and IP.
- Belgium, Germany, Denmark, Spain, Italy, Netherlands and the UK should be requested to remove the ENT requirement for CSS, since the application of this test would undermine Mode 4 access.
- All EU Members should be requested to allow for IPs.

(v) Mode 3 for Midwives

France could be requested to remove restrictions as to legal form, and allow legal forms as allowed for EU investors.

(vi) Mode 4 for Midwives

(a) Requests for Key Personnel that could be considered include:

- Italy could be requested to remove residence requirement.
- France could be requested to remove nationality requirement and quota requirement.
- Belgium could be requested that the same process as followed by nationals from EU Members, should be applicable for professionals from African countries.
- Austria could be requested that experience requirements applicable should be of the same standard as for EU nationals, and that professionals from African countries should not be discriminated against.

(b) Requests for CSS and IP along the following points could be considered:

- France could be requested to make commitments for CSS
- Austria, Belgium, Germany, Denmark, Spain, Ireland, Italy, Netherlands and the UK should be requested to remove the ENT requirement for CSS, since the application of this test would undermine Mode 4 access.
- All EU Members should be requested to allow for IPs.

(viii) Mode 3 for Services provided by Nurses, Physiotherapists and Paramedical Personnel

- France could be requested to remove restrictions as to legal form, and allow legal forms as allowed for EU investors.
- Austria could be requested to liberalize mode 3 for paramedics also.

(ix) Mode 4 for Services provided by Nurses, Physiotherapists and Paramedical Personnel

(a) Requests for Key Personnel that could be considered include:

- Austria could be requested to remove restrictions on paramedics. Austria could also be asked that professionals from African countries should be subject to the same experience requirements as EU nationals.
- Belgium and France could be requested to clarify the nature of authorization required for Graduate Trainees. They should be requested to revert to their position as in the Revised Offer wherein there was no requirement for specific authorization of a Graduate Trainee.
- Denmark could be requested to remove residence requirement. Clarification should be sought on nature of authorization, and removal of any discriminatory requirements.
- Italy could be requested to drop its ENT requirements.

(b) Requests for CSS and IP:

- France could be requested for making commitments for CSS.
- Austria, Belgium, Germany, Denmark, Spain, Ireland, Italy, Netherlands and the UK could be requested to remove the ENT requirement for CSS, since the application of this test would undermine Mode 4 access.
- All EU Members should be requested to allow for IPs.

VI REQUESTS IN RESPECT OF COMPUTER AND RELATED SERVICES

- (i) Requests from African countries should highlight the need for assistance in putting in place legal frameworks in African countries, that can facilitate growth of IT-enabled

services through Mode 1²⁵, including legal frameworks for data protection and storage.

- (ii) EU Members could be requested not to apply ENT requirements in respect of CSS and IP.

VII REQUESTS IN RESPECT OF RESEARCH AND DEVELOPMENT SERVICES

- (i) Modes 1, 2 and 3: African countries should consider requesting the EU to remove the restriction on publicly funded R&D, and enable funding access for entities and nationals from African countries. This could be a significant vehicle in which the objectives of Article 132 (f) of the EPA, to encourage cooperative research in science and technology, could be achieved.

- (ii) Mode 4: Requests in respect of CSS and IP that could be considered include:

- Denmark could be requested not to make CSS and IP access subject to ENT.
- A clarification should be sought regarding EC Directive 2005/71/EC, which EU Members have specified as requiring compliance for entry of CSS and IP. The residence requirements required under the Directive would need to be assessed with the duration of stay contemplated for CSS and IP under the Cariforum EPA, which is 6 months duration in any 12-month period. A clarification in this regard may be sought from the EU, in order to ensure that compliance with the EC Directive should not, in effect, hinder access for CSS and IP.

VIII REQUESTS IN RESPECT OF POSTAL AND COURIER SERVICES

- (i) Chapter on Courier Services: If African countries do not as yet have a law regulating courier services, then undertaking commitments on the nature of regulatory requirements proposed in the Cariforum EPA's Chapter on Courier Services may be too premature. The EU could be requested that a provision on transition period should be included before the relevant provisions of the EPA come into effect. The chapter should also comprise of concrete obligations on the EU to provide training, capacity building and technical assistance in order to enable enactment and implementation of an appropriate legal framework.

- (ii) Mode 4 Commitments for CSS and IP: A request asking EU Members to undertake commitments could be considered.

IX REQUESTS IN RESPECT OF TELECOMMUNICATION SERVICES

- (i) Chapter on Telecommunication Services in the EPA: African countries could consider the following:

²⁵ This has been discussed further in the report relating to ITES services submitted separately.

- a) A request to the EU that they should have the flexibility to adopt regulatory regimes for telecommunications, rather than have onerous commitments as proposed in the chapter on telecommunications under the Cariforum EPA.
- b) African countries could also consider proposing that the benchmark for the regulations should be the more flexible approach of the GATS Reference Paper on Telecommunications, and not the more stringent provisions of the Cariforum EPA.
- c) If the above approach is not acceptable to the EU, then African countries should consider suggesting appropriate language regarding phased implementation of the provisions and longer time period for implementing its obligations. There should also be a clear commitment that the EU would provide technical and financial assistance to implement the proposed legal framework.

(ii) Mode 4 Commitments for CSS and IP: A request asking EU Members to undertake commitments could be considered.

X REQUESTS IN RESPECT OF EDUCATIONAL SERVICES

- (i) Mode 3: A clarification may be asked of the EU regarding Mode 3 for Primary, Secondary, Higher and Adult Educational services, which are subject to grant of a 'concession'. The clarification required is whether both private and publicly funded educational services would be considered as part of the 'educational network' in respect of which a concession is required.
- (ii) Modes 1 and 4: Keeping in view that the primary interest for African countries may be in Modes 1 and 4, the following requests to the EU could be considered:
 - a. Mode 1 related commitments could be requested from Austria, France, Italy and Sweden for Primary, Secondary and Higher Educational Services.
 - b. Austria should remove restrictions on broadcasting of 'adult education services' through radio and TV channels, and treat African service providers on par with EU service providers.
 - c. EU should be requested to allow Mode 1 in 'Other Educational Services'.
 - d. EU Members should be asked to explain the status of 'Unbound' for CSS in Higher Educational Services in Annex IV.d of the Cariforum EPA, when Article 83(2) of the EPA seems to indicate that CSS are allowed in this sector.
 - e. Access for CSS and IP should be requested in all the sub-sectors under 'Educational services', i.e., Primary, Secondary, Higher, Adult and Other Educational services.
 - f. France, Italy and Denmark should be requested to remove nationality requirements for Key Personnel.

XI REQUESTS IN RESPECT OF FINANCIAL SERVICES

- (i) New Financial Services: Any separate chapter on Financial Services under the proposed EPA would need to have language to the effect that regulatory controls over

new financial services and products would be applicable, including specific authorizations and terms and conditions qualifying such authorizations.

(ii) Data Processing: Provisions on Data Processing in relation to Financial Services would need to reflect the following principles: (a) There will be a phased implementation of these provisions; (b) EU shall provide technical and financial assistance in order to formulate and implement a regulatory regime for protection of data.

(iii) Mode 1 in Banking and Financial Services: Mode 1 under the Cariforum EPA is Unbound for several members including Austria, Germany, Denmark, Spain, France, Netherlands, Sweden and the UK, except for provision of financial information and financial data processing and for advisory and other auxiliary services. This position is more restrictive than under the EU Revised Offer. The rationale for this revised position needs to be sought from the EU.

(iv) Mode 4: Commitments for CSS and IPs may be sought, depending on the interests of African countries in respect of movement of financial service professionals.

XII REQUESTS IN RESPECT OF TOURISM AND RELATED SERVICES

(i) Mode 1: Italy could be requested to commit to Mode 1 access.

(ii) Mode 4 for Key Personnel: Spain, France and Italy could be requested to remove their nationality requirements.

(iii) Mode 4 for CSS: EU Members should be requested to remove ENT requirements for CSS. Spain and France should be requested to provide access to CSS under a binding commitment.

(iv) Mode 4 for IP: All EU Members should be requested to allow access for Tourist Guides as both CSS and IP.

(v) Strengthening section on Tourism Services under the EPA: The section on Tourism services under the EPA would need to be strengthened through appropriate language that allows for monitoring of the implementation of the provisions dealing with technology transfer, technical assistance and development cooperation.

XIII REQUESTS IN RESPECT OF ENTERTAINMENT SERVICES

(i) Mode 1: Key Members, such as Belgium, Denmark, Germany, Spain, France, Italy, Netherlands and the United Kingdom, could be requested to liberalize Mode 1 since African countries could potentially be interested in delivery of entertainment content through cross-border supply.

(ii) Mode 4- CSS: Belgium should be requested to make commitments for CSS, since this is the only EU Member that has retained the 'Unbound' status for CSS. Additionally,

all other Key Members should be asked to remove the requirement that CSS entry is subject to qualifications requirement, since this in effect nullifies Article 83(2)(c) of the Cariforum EPA. Key Members should also be requested to drop the Economic needs test requirement for CSS.

- (iii) Mode 4- IP: All EU Members could also be requested to open up Entertainment Services to Independent Professionals from Africa, since it may not be possible in all instances to establish an employer-employee relationship between a entertainment service provider and a specific organization.

XIV REQUESTS IN RESPECT OF LIBRARY, MUSEUMS AND OTHER CULTURAL SERVICES:

- (i) Modes 1 & 2: Key members such as Belgium, Denmark, Germany, Spain, France, Ireland, Italy, Netherlands, Sweden and UK, could be requested to open Modes 1 and 2 for atleast the category of 'other cultural services'. Delivery of content pertain to this category through cross-border supply could be of potential interest for African countries.
- (ii) Mode 3: Key members may also be requested to liberalize Mode 3 for at least 'other cultural services'.
- (iii) Mode 4- CSS and IP: Key Members may also be requested to consider allowing service providers in Mode 4, especially as CSS and IP, since these categories could be of interest for African countries.

XV REQUESTS IN RESPECT OF SPORTING SERVICES

- (i) Mode 4: Key members may be requested to consider allowing service providers in Mode 4, especially as CSS and IP, since these categories could be of interest for African sportspersons.

XVI REQUESTS IN RESPECT OF RECREATIONAL, PARK AND BEACH SERVICES:

- (i) Mode 4- CSS and IP: Key members may be requested to consider allowing service providers in Mode 4, especially as CSS and IP, since these categories could be of interest for African sportspersons.

XVII REQUESTS IN RESPECT OF MARITIME TRANSPORT AND SERVICES AUXILIARY TO MARITIME TRANSPORT

- **Requests on EPA Provisions on Maritime Transport**

- (i) Multi-modal transport: Use of the term ‘multimodal transport’ as part of the definition of ‘International Maritime Transport’ may need to be reconsidered since there may be distinct regulatory frameworks in African countries in relation to different modes of transport.
 - (ii) Cargo-sharing arrangements: Article 109(4) prohibits existing and future cargo-sharing arrangements. This may need to be reviewed based on the interests of African countries. It is also important to note that EU’s FTA with Chile incorporates the following exception to the prohibition on ‘cargo-sharing arrangements’ where liner shipping companies would not otherwise have effective opportunity to ply for trade to and from the third country. Such a provision should be considered in the context of the EPA with African countries, provided this is an area of concern.
- **Maritime Transport:**
- (i) Modes 1 and 3 for EU may be requested to clarify the nature of authorization required in the context of feeding services.
 - (ii) Mode 4- Key Personnel: Nationality requirements for a ship’s crew may need to be removed, since this will effectively nullify opportunity for any foreign service provider becoming part of a ship’s crew. Additionally, Austria could be requested to remove nationality requirements for managing directors.
 - (iii) Mode 4- CSS and IP: Requests to allow for CSS and IP may be considered depending on the level of interest in African service providers.
- **Services Auxiliary to Maritime Transport**
- (i) Mode 1: Requests for removal of restrictions on Mode 1 in relation to customs clearance for container station and depot services, cargo handling, storage and warehousing services, and pushing and towing services, may be considered.
 - (ii) Mode 3, ENT: Italy may be asked to remove ENT requirements for Mode 3.
 - (iii) Mode 3, Nationality: Nationality requirements in all of EU in respect of crews required for pushing, towing and supporting services for maritime transport, should be requested to be removed, since these requirements nullify the possibility of any foreign service provider becoming a member of such crew.
 - (iv) Mode 4- Key Personnel: Request for removal of Residency requirements in Italy and Denmark in relation to Key Personnel, may need to be considered.
 - (v) Request for commitments in relation to CSS and IP may be considered.

XVIII REQUESTS IN RESPECT OF SERVICES AUXILIARY TO AIR TRANSPORT

- (i) Mode 1: Request for allowing Mode 1 in relation to maintenance and repair of aircraft, as well as ground-handling and airport management, may be sought.

- (ii) Computer Reservation Systems: A clarification may need to be sought from EU on the nature of ‘specific obligations for service suppliers operating computer reservation systems owned or controlled by air carriers’, in respect of Modes 1 and 3.
- (iii) Nationality Requirements: Request for removal of nationality requirements for owners of an aircraft, and nationality requirements for directors of a juridical person owning an aircraft, may need to be considered.
- (iv) CSS and IP: Request for commitments in relation to CSS and IP may be considered.

XIX REQUESTS IN RESPECT OF PROTOCOL ON CULTURAL COOPERATION

In order to make the commitments stronger and legally binding under the Cultural Cooperation Protocol, and based on the discussions above, African countries could consider making the following requests in relation to the language used in the Protocol:

- (i) Article 3(1): Stronger verbiage could be considered committing that the parties “*shall allow entry and temporary stay into their territories of artists and cultural professionals*”, instead of the current language which states “*shall endeavour to facilitate*”.
- (ii) Separate Visa Categories: In order to facilitate entry under the Protocol, EU Member should be asked to put in place a distinct visa category, which would enable artists and cultural professionals to have freedom of movement across all EU Members, during the duration of their visa. The documentary requirements for such visa categories should also be clarified.
- (iii) No Qualification requirements and other restrictive criteria: The Parties should commit to language which clearly states that they will not apply any regulations relating to qualification requirements, or licensing, or any other criteria such as numerical quotas or economic needs tests.
- (iv) Technical Assistance and Technology Transfer: The obligation on EU Members to provide technical assistance and technology transfer under Article 4 of the Protocol, may need to be strengthened. It currently reads as an ‘endeavour’. A joint monitoring committee may need to be considered to review and monitor the implementation of the provisions relating to technical assistance and technology transfer.
- (v) Co-produced Works: One of the significant and important provisions in the protocol is providing ‘co-produced’ works involving just 20% financial contribution from a Caribbean party, the status of *European Works* under EU regulations. This is significant because of the various benefits relating to telecast and distribution rights that Caribbean co-producers can avail of in Europe. This needs to be preserved under the African EPAs as well.

ANNEXURE A: KEY SERVICE SECTORS

W 120 No.	W-120 Classification
1A(h)	Medical and dental services
1A(j)	Services provided by nurses, midwives, physiotherapists and para-medical personnel
1B	Computer and related services
1C	Research and Development Services
2	Communication Services: A. Postal Services B. Courier Services C. Telecommunication D. Audiovisual services
5	Educational Services A. Primary education services 921 B. Secondary education services 922 C. Higher education services 923 D. Adult education 924 E. Other education services 929
7	Financial Services
9	Tourism and Travel Related Services A. Hotels and restaurants (including catering) B. Travel agencies and tour operator services C. Tourist Guides D. Other
10	Recreational, Cultural and Sporting Services (other than audiovisual services) A. Entertainment services (including theatre, live bands and circus services) 9619 B. News Agency Services C. Libraries, archives, museums and other cultural services 963 D. Sporting and other recreational services 964 E. Other
11.	Transport Services A. Maritime Transport C. Air Transport H. Services auxiliary to all modes of Transport [Special focus on Maritime & Air Transport]

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