PROTOCOL III
ON TRADE IN SERVICES

SECTION I
GENERAL PROVISIONS

ARTICLE 1
Objective and Scope

1. The Republic of Turkey and Montenegro (hereinafter referred as Parties), reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for progressive and reciprocal liberalisation of trade in services.

2. This Protocol applies to measures by the Parties affecting trade in services.

3. This Protocol shall not apply:

   (a) to domestic and international air transport services, whether scheduled or non-scheduled and services directly related to the exercise of traffic rights, other than:

      (i) aircraft repair and maintenance services;

      (ii) selling and marketing of air transport services;

      (iii) computer reservation system (CRS) services;

   (b) cabotage in maritime transport services;

   (c) subsidies or grants provided by a Party or a state enterprise thereof, including government-supported loans, guarantees and insurance.

4. Nothing in this Protocol shall be construed to require any Party to privatize public undertakings or to impose any obligation with respect to government procurement.

5. The provisions of this Protocol shall not apply to services supplied in the exercise of governmental authority within the respective territories of the Parties.

6. Each Party retains the right to exercise its powers and to regulate and introduce new regulations consistent with the provisions of this Protocol in order to meet legitimate public policy objectives.

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ARTICLE 2
Incorporation of Provisions from the GATS

Wherever a provision of this Protocol provides that a provision of the GATS is incorporated into and made part of this Protocol, the meaning of the terms used in the GATS provision shall be understood as follows:

(a) "Member" means Party;

(b) "Schedule" means a Schedule referred to in Article 16 (Schedules of Specific Commitments) and contained in Annex I; and

(c) "Specific commitment" means a specific commitment in a Schedule referred to in Article 16.

ARTICLE 3
Definitions

For the purpose of this Protocol, and with reference to Article 2:

(a) the following definitions and explanations of the Article I of the GATS are, *mutatis mutandis*, incorporated into and made part of this Protocol:

(i) "trade in services";

(ii) "services"; and

(iii) "a service supplied in the exercise of governmental authority";

(b) "measures by Parties" means measures adopted or maintained by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(c) "measures by Parties affecting trade in services" include measures in respect of:

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by Parties to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

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(d) "service supplier" means any person that supplies, or seeks to supply, a service;[1]

(e) "service of the other Party" means a service which is supplied,

(i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of service through commercial presence or through presence of natural persons, by a service supplier of that other Party;

(f) "natural person of a Party" means a natural person who is a national of either party according to its respective legislation;

(g) "juridical person" means any legal entity duly constituted or organized in accordance with the applicable laws of a Party, whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture or business association;

(h) "juridical person of the other Party" means a juridical person which is either:

(a) constituted or otherwise organized under the law of the other Party, and is engaged in substantive business operations in the territory of that Party; or

(b) in the case of the supply of a service through commercial presence, owned or controlled by;

(i) natural persons of that Party; or

(ii) juridical persons of that Party identified under subparagraph (a);

(i) the following definitions of Article XXVIII of the GATS are hereby incorporated into and made part of this Protocol:

(i) "measure";

(ii) "supply of a service";

(iii) "commercial presence";

(iv) "sector" of a service;

(v) "monopoly supplier of a service";

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[1] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Protocol. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

(vi) "service consumer";

(vii) "person";

(viii) "owned", "controlled" and "affiliated"; and

(ix) "direct taxes";

(j) "GATS" means the General Agreement on Trade in Services of 1994;

(k) the "FTA" means the Free Trade Agreement between the Republic of Turkey and Montenegro;

(l) The definitions of paragraph 6 of the GATS Annex on Air Transport Services are hereby incorporated into and made part of this Protocol, *mutatis mutandis*.

ARTICLE 4
Most-Favoured-Nation (MFN) Treatment

1. Without prejudice to measures taken in accordance with Article VII of the GATS, and except as provided for in its List of MFN Exemptions contained in Annex I, a Party shall accord immediately and unconditionally, to services and service suppliers of the other Party treatment no less favourable than the treatment it accords to like services and service suppliers of any non-party.

2. Treatment arising from an economic integration agreement concluded by one of the Parties and notified under Article V or Article V *bis* of the GATS shall be excluded from the obligation in paragraph 1.

3. If a Party enters into an agreement of the type referred to in paragraph 2, it shall upon request from the other Party afford adequate opportunity to that Party to negotiate the benefits granted therein.

4. The rights and obligations of the Parties in respect of advantages accorded to adjacent countries shall be governed by paragraph 3 of Article II of the GATS.

ARTICLE 5
Market Access

Commitments on market access shall be governed by Article XVI of the GATS, which is hereby incorporated into and made part of this Protocol.

ARTICLE 6
National Treatment

Commitments on national treatment shall be governed by Article XVII of the GATS, which is hereby incorporated into and made part of this Protocol.

ARTICLE 7
Additional Commitments

Additional commitments shall be governed by Article XVIII of the GATS, which is hereby incorporated into and made part of this Protocol.

ARTICLE 8
Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application covered by this Protocol affecting trade in services are administered in a reasonable, objective and impartial manner.

2. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall ensure, as appropriate for individual sectors where specific commitments are undertaken, that such measures are:

   (a) based on objective and transparent criteria, such as competence and the ability to supply the service;

   (b) not more burdensome than necessary to ensure the quality of the service and;

   (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

3. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of services.

4. Where a Party requires authorization for the supply of a service on which specific commitment has been made, it shall ensure that its competent authorities:

   (a) within a reasonable period of time after the submission of an application considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application;

   (b) to the extent practicable, establish an indicative timeframe for processing of an application;

   (c) if an application is rejected, to the extent practicable inform the applicant of the reasons for the rejection, either directly or on request as appropriate;

   (d) at the request of the applicant, provide, without undue delay, information concerning the status of the application;

   (e) as far as practicable, provide applicants with the opportunity to correct minor errors and omissions in their applications and endeavour to provide guidance on the additional information required; and

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(f) where they deem appropriate, accept copies of documents that are authenticated in accordance with its domestic law in place of original documents.

5. Each Party shall ensure that any authorization fee charged by the competent authority is reasonable, and does not, in itself, restrict the supply of the relevant service.

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of the other Party.

ARTICLE 9
Mutual Recognition

1. For the purpose of the fulfilment of its relevant standards or criteria for the authorisation, licensing or certification of service suppliers, each Party shall give due consideration to any requests by the other Party to recognise the education or experience obtained, requirements met, or licences or certifications granted in that other Party. Such recognition may be based upon an agreement or arrangement with that other Party, or otherwise be accorded autonomously.

2. Where a Party recognises, by agreement or arrangement, the education or experience obtained, requirements met, or licences or certifications granted, in the territory of a third party, that Party shall afford the other Party adequate opportunity to negotiate its accession to such an agreement or arrangement, whether existing or future, or to negotiate a comparable agreement or arrangement with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for the other Party to demonstrate that the education or experience obtained, requirements met, or licences or certifications granted, in the territory of that other Party should also be recognised.

3. The Parties shall encourage their relevant competent bodies to enter into negotiations on recognition of professional qualifications and/or registration procedures with a view to the achievement of early outcomes.

4. Any such agreement or arrangement or autonomous recognition shall be in conformity with the relevant provisions of the WTO Agreement, in particular paragraph 3 of Article VII of the GATS.

ARTICLE 10
Transparency and Disclosure of Confidential Information

The rights and obligations of the Parties in respect of transparency shall be governed by paragraphs 1 and 2 of Article III and by Article III *bis* of the GATS, which are hereby incorporated into and made part of this Protocol.

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ARTICLE 11
Monopolies and Exclusive Service Suppliers

The rights and obligations of the Parties in respect of monopolies and exclusive service suppliers shall be governed by paragraphs 1, 2 and 5 of Article VIII of the GATS, which are hereby incorporated into and made part of this Protocol.

ARTICLE 12
Business Practices

The rights and obligations of the Parties in respect of business practices shall be governed by Article IX of the GATS, which is hereby incorporated into and made part of this Protocol.

ARTICLE 13
Payments and Transfers

1. Except under the circumstances envisaged in Article 14 (Restrictions to Safeguard the Balance of Payments) the Parties shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Protocol shall affect the rights and obligations of the Members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 14 (Restrictions to Safeguard the Balance of Payments) or at the request of the Fund.

ARTICLE 14
Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

   (a) shall not be discriminatory;

   (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

(c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, the Parties may give priority to the supply of services which are more essential to their economic or development programs. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. The Party maintaining or having adopted such restrictive measures, or any changes thereto, shall promptly notify them to the Joint Committee and present, as soon as possible, a time schedule for their removal.

ARTICLE 15
Exceptions

The rights and obligations of the Parties in respect of general exceptions and security exceptions shall be governed by Article XIV and paragraph 1 of Article XIV *bis* of the GATS, mutatis mutandis, which are hereby incorporated into and made part of this Protocol.

ARTICLE 16
Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 5, 6 and 7. With respect to sectors where such specific commitments are undertaken, each Schedule shall specify the elements set forth in subparagraphs (a) to (e) of paragraph 1 of Article XX of the GATS.

2. Measures inconsistent with both Articles 5 and Article 6 shall be dealt with as provided for in paragraph 2 of Article XX of the GATS.

3. The Parties' Schedules of specific commitments are set out in Annex I.

4. Neither Party may adopt more discriminatory measures with regard to services or service suppliers of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

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ARTICLE 17
Modification of Schedules

1. The Parties shall, upon written request by a Party, hold consultations to consider any modification or withdrawal of a specific commitment in the requesting Party's Schedule of specific commitments.

2. The consultations shall be held within three months after the requesting Party made its request. In the consultations, the Parties shall aim to ensure that a general level of mutually advantageous commitments no less favourable to trade than that provided for in the Schedule of specific commitments prior to such consultations is maintained.

3. Modifications of Schedules are subject to the procedures set out in Articles 29 (Procedures of the Joint Committee) and Article 34 (Amendments) of the FTA.

ARTICLE 18
Relations with the Agreement

1. This Protocol shall be an integral part of the Free Trade Agreement between the Republic of Turkey and Montenegro, signed on 26 November 2008 and entered into force on 1 March 2010, as stipulated in Article 35 (Protocols and Annexes) of the FTA.

2. The provisions of the FTA shall not apply to this Protocol, with the exception of Article 28 (Establishment of the Joint Committee), Article 29 (Procedures of the Joint Committee), Article 32 (Fulfilment of Obligations), Article 34 (Amendments), Article 35 (Protocols and Annexes), Article 36 (Validity and Withdrawal), Article 37 (Entry into Force) of the FTA.

3. For the purposes of Article 32 (Fulfilment of Obligations) of the FTA, the procedures set in Article 21 (Notifications and Consultations Procedure for the Application of Measures) of the FTA shall apply, *mutatis mutandis*.

4. Unless otherwise specified, any consultations that will take place under this Protocol shall be subject to the provisions set in Article 21 (Notifications and Consultations Procedure for the Application of Measures) of the FTA, *mutatis mutandis*.

5. In the event of any inconsistency between this Protocol and the provisions of the FTA, the provisions of this Protocol shall prevail to the extent of the inconsistency.

ARTICLE 19
Annexes, Appendixes and Footnotes

The Annexes, Appendixes and footnotes to this Protocol are integral parts of this Protocol.

SECTION II
TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 20
Scope

1. This Section applies to measures affecting the entry and temporary stay of natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.

2. This Section shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. Nothing in this Section shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under this Protocol.[2]

ARTICLE 21
General Principle

Each Party shall apply its measures relating to the provisions of this Section as expeditiously as possible, so as to avoid unduly impairing or delaying trade in goods or services under this FTA.

ARTICLE 22
Specific Commitments

1. In scheduling commitments pursuant to Article 5 (Market Access) and Article 6 (National Treatment) of the Protocol, each Party shall set out in its schedule the commitments it undertakes for the entry and temporary stay in its territory of natural persons of the other Party. These schedules shall specify the terms, limitations and conditions governing those commitments for each category of service supplier, including the period of stay and any possibility for extension of stay, any numerical quotas and any requirement of an economic needs test.

2. Each Party shall grant entry and temporary stay to natural persons of the other Party in accordance with this Section including the terms and conditions for each category set out in Annex I (Schedule of Specific Commitments) provided that the natural persons comply with the relevant immigration laws and regulations applicable to entry and temporary stay such as those relating to public health and safety and national security.

[2] The sole fact of requiring a visa for natural persons shall not be regarded as nullifying or impairing benefits under the terms of a specific commitment in Annex I (Schedule of Specific Commitments).

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3. The sole fact that a Party grants entry and temporary stay to a natural person of the other Party shall not be construed to exempt that person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practice a profession or otherwise engage in business activities.

ARTICLE 23
Provision of Information

1. For the purposes of this Section, each Party shall ensure that its competent authorities make publicly available the information necessary for an effective application of the grant of authorizations for the entry into and temporary stay in its territory.

2. Information referred to in subparagraph (1) shall include descriptions of, in particular:

   (a) all categories of authorization and permits relevant to the entry and temporary stay for each category set out in Annex I (Schedule of Specific Commitments);

   (b) requirements and procedures for application for, and issuance of, first-time entry and temporary stay, including conditions to be met and method of filing; and

   (c) requirements and procedures for application for, and issuance of, renewal of entry and temporary stay authorization and permits.

3. Each Party shall provide the other Party with details of relevant publications or web-sites where information referred to in subparagraph (2) is made available.

ARTICLE 24
Entry and Temporary Stay Related Requirements and Procedures

1. Parties shall, in accordance with domestic laws and regulations, ensure transparency, efficiency, due and fair process in visa, work permits or any similar type of authorization regarding entry and temporary stay of natural persons supplying services.

2. Documents requested for granting visa, work permit and any similar type of document must be relevant and not excessive in relation to the purpose for which they are collected.

3. Fees for processing applications for entry and temporary stay and work for the service providers shall be reasonable and determined with regard to the administrative costs involved.

4. Complete applications shall be processed promptly and expeditiously. The competent authorities of each Party shall notify the applicant for entry, temporary stay or work permit of the outcome of its application promptly after a decision has been taken. The notification shall include, if applicable, the period of stay and any other terms and conditions.

5. The period for processing complete work permit applications may not exceed 30 days, except in cases where there are reasonable grounds.

6. Upon the applicant's request, the competent authorities of the Party concerned shall, without undue delay and to the extent possible, provide information concerning the status of the applicant's application.

7. In case of an incomplete application, the applicant shall be informed promptly of the information required to complete the application and shall be provided with the opportunity to correct any deficiencies within a reasonable period of time.

8. When the application is refused, the applicant shall be informed of the refusal and be provided information on available review procedures.

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SECTION III
TELECOMMUNICATIONS

ARTICLE 25
Definitions

For purposes of this Section:

authorization means licenses, concessions, permits, registrations or other authorizations that a Party may require to provide public telecommunications services;

co-location means the access and use of physical space in order to install, maintain or repair equipment on properties owned, or controlled and used, by another supplier for the provision of public telecommunications services;

cost-oriented means based on costs, and may include a reasonable profit and may involve different cost methodologies for different facilities or services;

end user means a final consumer of, or subscriber to, a public telecommunications service, which is not authorized to resell and/or provide public telecommunication services;

enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any company, corporation, trust, partnership, sole proprietorship, joint venture or other business association, and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party and carrying out business activities there;

essential elements are those elements of the network or public telecommunications service that:

(a) are essential for the provision of public telecommunications services;

(b) are exclusively or predominantly provided, by a single supplier or a limited number of suppliers; and

(c) are not economically or technically feasible to replace in order to supply a service;

interconnection means the link between two or more public telecommunication networks within the territory of a Party, in order to allow users of one supplier to communicate with the users of another supplier and also be able to have access to the services provided by another supplier;

leased circuits means telecommunications facilities between two or more designated points that are destined for the dedicated use or for the availability of a particular client or for other users chosen by that client;

major supplier means a supplier of public telecommunications services which has the ability

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to importantly affect the terms of participation, from the point of view of price and supply in the relevant market of networks or public telecommunications services, as a result of:

(a) control of the essential elements or,

(b) the use of its position in the market;

network element means any facility or an equipment used for the provision of a public telecommunications service, its technical definition must include its characteristics, functions and capabilities that are provided by such facilities or equipment;

non-discriminatory means treatment no less favourable than that given to any other network or similar telecommunication services user, in like circumstances;

number portability means the right of end-users of public telecommunications services to maintain for fixed telephone numbers at the same location, for mobile numbers at any location, the same phone numbers when switching to a similar supplier of public telecommunications services in that Party's territory;

public telecommunications network means the infrastructure used for providing public telecommunications services;

public telecommunications services means any telecommunications service, offered to the general public. These services may include, among others, telephony and data transmission, without any end to end change in the form or content of the information, but excludes information services;

reference interconnection offer means an offer of interconnection offered by a major supplier and registered or approved by the telecommunication regulatory body, which is sufficiently detailed to allow suppliers of public telecommunications services willing to accept those rates, terms and conditions, to obtain interconnection without having to engage in negotiations with the supplier in question;

telecommunications means the emission, transmission and reception of signals by any physical, electromagnetic or optical means;

telecommunications regulatory authority means the body or bodies in the telecommunications services sector, in charge of any of the regulatory tasks assigned in accordance with the national legislation of each Party;

termination point of the network means the physical network connection point where a public telecommunications network connects with the facilities and equipment of end-users or, where applicable, the point where other telecommunication networks connect to this one; and

user means a natural or legal person, whether a subscriber or not, that uses telecommunications services, may be a supplier of public telecommunications services.

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ARTICLE 26
Scope

1. This Section shall apply to:

   (a) measures adopted or maintained by a Party, related to the access to, and the use of, the public telecommunications networks and services;

   (b) measures adopted or maintained by a Party, related to the obligations of the providers of public telecommunications networks or services; and

   (c) other measures adopted or maintained by a Party, related to the public telecommunications networks and services.

2. This Section shall not apply to measures adopted or maintained by a Party related to broadcasting[3] and cable distribution of radio or television programming destined to the public, except to guarantee that the enterprises that provide these services have access and continuous use of public telecommunications networks and services as established in Article 27 (Public Telecommunications Networks and Services Access and Use).

3. Nothing in this Section shall be construed to require a Party, or require a Party to compel any enterprise, to establish, construct, acquire, lease, operate or supply public telecommunication networks or services, where such networks or services are not offered to the general public.

4. In addition, this Section shall not be construed as preventing a Party from prohibiting persons that operate private networks, the use of their networks to provide public telecommunication networks or services to third persons.

ARTICLE 27
Public Telecommunications Networks and Services Access and Use

1. Subject to the right of a Party to restrict the supply of a service in accordance with the reservations set out in their Schedules, a Party shall ensure that enterprises of the other Party have access to public telecommunications networks or services offered in its territory or across its borders and may use them on reasonable and non-discriminatory terms and conditions, including, among other forms, the provisions established in paragraphs 2 to 7.

2. Each Party shall ensure that such enterprises are permitted to:

   (a) buy or lease and connect terminals or other equipment that interfaces with the public telecommunications networks;

   (b) provide services to end-users, over owned or leased circuits;

[3] Broadcasting shall be defined as provided for in the relevant legislation of each Party.

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(c) interconnect private, leased or owned, circuits with networks and public telecommunication services of that Party, or with circuits leased or owned by another enterprise; and

(d) perform switching, signalling, processing and conversion functions; and use operating protocols of their choice.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunication networks and services to transmit information in its territory or across its borders, and to access information contained in databases or otherwise stored in a readable form by a machine in the territory of any Party. Any new or amended measures of a Party significantly affecting such use shall be notified. Upon the request of the other Party, each Party shall afford adequate opportunity for dialogue under the Joint Committee regarding such notification.

4. Notwithstanding paragraph 3, a Party may take necessary measures to:

(a) ensure the security and confidentiality of messages, and/or

(b) protect the privacy of personal data of telecommunications end users;

provided that such measures are in line with its relevant legislations and not applied in a way that would constitute a discriminatory, arbitrary or unjustifiable mean, or a disguised restriction on trade in services.

5. Each Party shall ensure that no conditions are imposed on access to and use of public telecommunications networks or services, except those deemed necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications networks or services, in particular their ability to make their networks or services available to the general public;

(b) protect the privacy of personal data, confidentiality of communications, technical integrity and security of public telecommunication networks or services; or

(c) ensure that service suppliers of the other Party do not provide services that are limited by the reservations listed by the Parties in their schedules of commitments.

6. Provided that they satisfy the criteria set out in paragraph 5, the conditions for access and use of public telecommunications networks or services may include:

(a) the requirement to use specific technical interfaces, including interface protocols, for interconnection with such networks and services;

(b) requirements, where necessary, for interoperability of such services;

(c) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to those networks; and

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(d) restrictions on the interconnection of private, leased or owned, circuits with such networks or services, or with circuits leased or owned by other enterprise.

7. Nothing in this Article shall prevent a Party to establish obligation of requiring notification, license, concession, permit, registration or other type of authorization for an enterprise to provide any kind of public telecommunications service in its territory.

ARTICLE 28
Public availability of authorization criteria

1. Where authorization is required, the following will be made publicly available:

   (a) all the authorization criteria and the period of time normally required to reach a decision concerning an application for authorization; and

   (b) the terms and conditions of individual authorization.

2. The reasons for the denial of an authorization will be made known to the applicant upon request.

ARTICLE 29
Performance of Major Suppliers

Treatment of Major Suppliers

1. Each Party shall ensure that major suppliers in its territory provide suppliers of public telecommunications services of the other Party, treatment no less favourable than that provided by such suppliers, in like circumstances, to its subsidiaries, to its affiliates or non-affiliated suppliers of public telecommunications services with respect to:

   (a) availability, supply, rates or quality of networks or similar public telecommunications services; and

   (b) the availability of technical interfaces necessary for interconnection.

Competitive Safeguards

1. Each Party shall maintain the appropriate measures to prevent suppliers that, in an individual or a conjunctive way, are major suppliers in its territory, apply or continue applying anti-competitive practices.

2. The anti-competitive practices referred to in paragraph 1 include:

   (a) perform anti-competitive activities of cross-subsidization;

   (b) use information obtained from competitors with anti-competitive results; and

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(c) not making available to other suppliers of public telecommunications services, in a timely manner, technical information on the essential elements and commercially relevant information which those suppliers need to provide public telecommunications services.

Interconnection Obligations relating to Major Suppliers

1. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications services of the other Party

   (a) at any technically feasible point in the major supplier's network that is offered to other suppliers of public telecommunication services in its territory;

   (b) under non-discriminatory terms, conditions (including technical standards and specifications), and rates;

   (c) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated suppliers of public telecommunications services or for its subsidiaries or other affiliates;

   (d) in a timely fashion, and on terms and conditions (including technical standards and specifications), and at cost-oriented rates (except when following market review, the regulatory authority imposes different model for determining rates) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the suppliers need not pay for network components or facilities that they do not require for the service to be provided; and

   (e) on request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of the other Party the opportunity to interconnect their facilities and equipment with those of the major supplier through a reference interconnection offer or another standard interconnection offer containing the rates, terms, and conditions that the major supplier offers generally to suppliers of public telecommunications services. In addition, each Party shall ensure that suppliers of public telecommunications services of the other Party have the opportunity to interconnect their facilities and equipment with those of the major supplier through negotiation of a new interconnection agreement.

3. Each Party shall provide a means for suppliers of the other Party to obtain the rates, terms, and conditions necessary for interconnection offered by a major supplier. Such means include, at a minimum, ensuring:

   (a) the public availability of rates, terms, and conditions for interconnection with a major supplier set by the telecommunications regulatory body; or

   (b) the public availability of a reference interconnection offer.

4. Each Party shall make publicly available the applicable procedures for interconnection negotiations with a major supplier in its territory.

ARTICLE 30
Supply and Pricing of Leased Circuits

1. Each Party shall ensure that major suppliers in its territory provide to enterprises and suppliers of public telecommunications services of the other Party leased circuits, which are public telecommunication services, in terms, conditions and rates that are reasonable and non-discriminatory.

2. For purposes of paragraph 1, each Party shall provide to its telecommunications regulatory body the authority to require major suppliers in its territory, offer to enterprises and suppliers of public telecommunications services of the other Party leased circuits, in a flat rate or in capacity-based and cost-oriented prices.

ARTICLE 31
Co-location

1. Each Party shall ensure that major suppliers in its territory provide suppliers of public telecommunication services of the other Party, the physical co-location of necessary equipment to interconnect or have access to unbundled network elements on terms and conditions, and at cost-oriented rates where applicable, that are reasonable, transparent and non-discriminatory.

2. Each Party may specify, in accordance with its domestic laws and regulations, the elements subject to paragraph 1.

ARTICLE 32
Access to Poles, Ducts, Conduits and Rights of Way

Each Party shall ensure that major suppliers in its territory provide access to poles, ducts, conduits and each Party shall ensure rights of way to suppliers of public telecommunications services of the other Party on terms and conditions and at rates that are reasonable and non-discriminatory.

ARTICLE 33
Resale

Each Party shall ensure that major suppliers in its territory:

(a) offer for resale, at reasonable[4] rates, to suppliers of public telecommunications services of the other Party, public telecommunications services that such major

[4] A Party may determine reasonable rates through any methodology it considers appropriate.

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suppliers provide retail to end users; and

(b) does not impose discriminatory or unjustified conditions or limitations in the resale of such services[5].

ARTICLE 34
Unbundling of Network Elements

1. Each Party shall provide to its telecommunications regulatory body, the authority to require major suppliers in its territory provide to suppliers of public telecommunications services of the other Party, access to the network elements in an unbundled way on terms and conditions, and cost-oriented rates that are reasonable, non-discriminatory and transparent for the supply of public telecommunications services.

2. Each Party may determine which network elements should be available in its territory and which suppliers may obtain such elements, in accordance with its domestic laws and regulations.

ARTICLE 35
Interconnection

1. Each Party shall ensure that suppliers of public telecommunications services in its territory provide, directly or indirectly, the possibility to negotiate interconnection to suppliers of public telecommunications services of the other Party, in accordance with the Party's domestic legislation.

2. For the purposes of paragraph 1, each Party shall ensure that suppliers of public telecommunications services in its territory take reasonable actions to protect the confidentiality of commercially sensitive information, or related to, suppliers and end users of public telecommunications services, and only use such information to provide those services.

ARTICLE 36
Number Portability

Each Party shall ensure that suppliers of public telecommunications services in its territory provide number portability, in an opportune way, and in reasonable and non-discriminatory terms and conditions.

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[5] Where its domestic law or legislation so establishes it, one Party may prohibit the reseller to obtain, at wholesale rates, a public telecommunications service that is available at a retail level only to a limited category of users, to offer such service to a different category of users.

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ARTICLE 37
Flexibility in the Choice of Technologies

1. Neither Party may prevent suppliers of public telecommunications services to have flexibility in choosing the technologies that they use to provide their services, including mobile wireless services, subject to the valid technical regulations in each Party.

2. Nothing in this Article shall be construed as preventing that, if a service supplier intends to provide a different approach to the service that was authorized, the regulatory body require additional license or other proper authorization to provide such public telecommunications service.

ARTICLE 38
Universal Service

1. Each Party has the right to define the kind of universal service obligations that it wishes to adopt or maintain.

2. Each Party shall administer any universal service obligation it adopts or maintains, in a transparent, non-discriminatory and competitively neutral way, and shall ensure that any universal service obligation is not more burdensome than necessary for the type of universal service defined by the Party.

ARTICLE 39
Attribution, Assignation and Use of Scarce Resources

1. Each Party shall administer its procedures for the attribution, assignation and use of scarce telecommunications resources, in an objective, opportune, transparent and non-discriminatory way, except those related to government use.

2. The measures of a Party related to the attribution and assignation of the spectrum and frequency management do not constitute incompatible measures, *per se* with Article 5 (Market Access).

3. In consequence, each Party shall retain the right to establish, implement and maintain spectrum and frequency management policies that may have the effect to limit the number of suppliers of public telecommunications services, as long as this is done in a compatible way with other provisions of this Protocol. In addition, each Party retains the right to attribute and assign frequency bands taking into account present and future needs and the availability of spectrum.

4. Each Party shall make available to the public the current state of attributed and assigned frequency bands but shall not be required to provide detailed identification of attributed and assigned frequencies for specific government uses.

5. Where the spectrum for non-government telecommunications services is attributed, each Party's procedures shall be based on open and transparent basis that considers the public interest. These procedures shall be based on domestic legislation and, in general, will be

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effectuated on market-based approaches and/or public tender procedures for the assignation of spectrum for terrestrial non-governmental telecommunications services.

ARTICLE 40
Regulatory Authority

1. Each Party shall ensure that its telecommunications regulatory authority is independent and is separate from and not accountable to, any supplier of public telecommunications services.

2. For this purpose, each Party shall ensure that its telecommunications regulatory authority has no financial interest or operational functions in any supplier of public telecommunications services.

3. Each Party shall ensure that the decisions and procedures of its regulatory authority are impartial with respect to all market participants. For this purpose, each Party shall ensure that any financial interest that the Party has in a supplier of public telecommunications services, does not influence the decisions and procedures of its telecommunications regulatory authority.

4. Neither Party shall provide to a supplier of public telecommunications services a treatment more favourable than that provided to a similar supplier of the other Party, justifying that the supplier that receives more favourable treatment is totally or partly owned by the national government of any of the Parties.

ARTICLE 41
Resolution of Domestic Telecommunications Disputes

Each Party shall ensure that there are internal mechanisms for dispute resolution, in accordance with its valid domestic legislation.

ARTICLE 42
Transparency

In addition to the regulations of Article 10 (Transparency and Disclosure of Confidential Information) of Section I (General Provisions), in accordance with domestic legislation of the Party, each Party shall ensure that to the extent possible:

(a) promptly publish or make available to the public the regulation that establishes the telecommunications regulatory authority, including the basis for such regulation;

(b) provide interested parties, as far as possible, with adequate public notice, of the opportunity to comment any regulation that the telecommunications regulatory authority proposes; and

(c) make available to the public the measures concerning public telecommunications networks or services, including measures relating to:

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(i) rates and other terms and conditions of the service;

(ii) specifications of technical interfaces;

(iii) conditions for the connection of the terminal and other equipment to the public telecommunications network;

(iv) requirements of notification, license, permit, registration or other authorization, if they exist;

(v) information about the responsible bodies of the elaboration, modification and adoption of measures related to standards that affect the access and use; and

(vi) procedures related to resolution of telecommunications disputes, set out in Article 41 (Resolution of Domestic Telecommunications Disputes).

ARTICLE 43
Relation with the Protocol

In case of any incompatibility between this Section and other parts of this Protocol, this Section shall prevail to the extent of the incompatibility.

ARTICLE 44
Standards and International Organizations

The Parties recognize the importance of international standards for global compatibility and interoperability of networks or telecommunication services, and undertake to promote such standards through the work of competent international bodies, including the International Telecommunication Union and the International Organization for Standardization.

SECTION IV
FINANCIAL SERVICES

ARTICLE 45
Scope and Definitions

1. This Section sets out the principles of the regulatory framework for all financial services on which specific commitments are undertaken in Annex I (Schedules of Specific Commitments).

2. For the purposes of this Section:

"financial services" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

(a) Insurance and insurance-related services:

(i) direct insurance (including co-insurance): life; non-life;

(ii) reinsurance and retrocession;

(iii) insurance inter-mediation, such as brokerage and agency; and

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services; and

(b) Banking and other financial services (excluding insurance):

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) guarantees and commitments;

(x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

A. money market instruments (including cheques, bills and certificates of deposits);
B. foreign exchange;
C. derivative products including, but not limited to, futures and options;

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D. exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
E. transferable securities; and
F. other negotiable instruments and financial assets, including bullion;

(xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) money broking;

(xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;

(xv) provision and transfer of financial information, and financial data processing and related software; and

(xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

"financial service supplier" means any natural person or juridical person of a Party that seeks to provide or provides financial services and does not include a public entity;

"new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party;

"public entity" means:

(a) a government, a central bank or a monetary authority of a Party or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(b) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

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ARTICLE 46
Prudential Carve-out[6]

1. Each Party may adopt or maintain measures for prudential reasons[7], including:

   (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; and

   (b) ensuring the integrity and stability of the Party's financial system.

2. These measures shall not be more burdensome than necessary to achieve their aim, and where they do not conform to the other provisions of this Agreement, they shall not be used as a means of avoiding each Party's commitments or obligations under such provisions.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

4. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the licensing and/or registration of cross-border financial service suppliers of the other Party and of financial instruments.

ARTICLE 47
Transparency

1. The Parties recognise that transparent regulations and policies governing the activities of financial service suppliers are important in facilitating access of foreign financial service suppliers to, and their operations in, each other's markets. Each Party commits to promoting regulatory transparency in financial services.

2. The competent authorities of each Party shall make available to interested persons domestic requirements and applicable procedures for completing applications relating to the supply of financial services.

3. Where a licence or an authorisation is required for the supply of a financial service, the competent authorities of a Party shall make the requirements for such a licence or an authorisation publicly available.

4. Each Party shall ensure that all measures of general application to which this Section applies are administered in a reasonable, objective, and impartial manner.

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[6] Any measure which is applied to financial service suppliers established in a Party's territory, that are not regulated and supervised by the financial supervisory authority of that Party would be deemed to be a prudential measure for the purposes of this Agreement. For greater certainty any such measure shall be taken in line with this Article.

[7] It is understood that the term "prudential reasons" may include the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial service suppliers as well as the maintenance of the safety and financial and operational integrity of payment and clearing systems.

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5. To the extent practicable, each Party should allow reasonable time between publication of final regulations of general application and their effective date.

6. Each Party shall ensure that the rules of general application adopted or maintained by self-regulatory organizations of the Party are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.

7. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding measures of general application covered by this Section.

ARTICLE 48
Self- Regulatory Organizations

When a Party requires membership or participation in, or access to, any self-regulatory organizations, securities or futures exchange or market, clearing agency or any other organization or association, in order for financial service suppliers of the other Party to supply financial services on an equal basis to financial service suppliers of the Party, or when the Party provides directly or indirectly such entities with privileges or advantages in supplying financial services, the Party shall ensure that such entities accord national treatment and MFN treatment to financial service suppliers of the other Party resident in the territory of the Party.

ARTICLE 49
Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to a Party's lender of last resort facilities.

ARTICLE 50
New Financial Services

1. Each Party shall permit a financial service supplier of the other Party established in its territory to provide any new financial service that the Party would permit its own financial service suppliers to supply, in like circumstances, under its domestic law, provided that the introduction of the new financial service does not require a new law or modification of an existing law.

2. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable period of time and the authorization may be refused only for prudential reasons.

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ARTICLE 51
Transfers and Processing of Information

Subject to its domestic legislation, no Party shall take measures that prevent transfers of information into or out of the Party's territory or the processing of financial information, including transfers of data by electronic means, or that, subject to importation rules consistent with international agreements, prevent transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier of the other Party. Nothing in this Article restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of this Section.

ARTICLE 52
Specific Exceptions

1. Nothing in this Protocol shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by its domestic regulations, by financial service suppliers in competition with public entities or private institutions.

2. Nothing in this Protocol shall apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.

3. Nothing in this Protocol shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities except when those activities may be carried out, as provided by its domestic regulations, by financial service suppliers in competition with public entities or private institutions.

ARTICLE 53
Dispute Settlement

For any arbitration panel that is established for disputes on prudential issues and other financial matters under this Agreement, the arbitrators shall have the necessary expertise relevant to the specific financial service under dispute.

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SECTION V
ELECTRONIC COMMERCE

ARTICLE 54
Definitions

For purposes of this Section:

"*digital products*" means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, and transmitted electronically. For greater certainty, digital products do not include digitised representations of financial instruments, including money;

"*electronic authentication*" means an electronic procedure that enables the confirmation of electronic identification of a physical or legal entity or verification of the origin and integrity of data in electronic form;

"electronic signature" means data in electronic form that is in, affixed to, or logically associated with, an electronic document, and that may be used to identify the signatory in relation to the electronic document and indicate the signatory's approval of the information contained in the electronic document;

"electronic technologies" means a combination of software and hardware that provides interaction between the persons of the Parties using an electronic document;

"*electronic transmission or transmitted electronically*" means transmissions made using any electromagnetic means, including by photonic means;

"personal data" means any data, including information, about an identified or identifiable natural person;

"*trade administration documents*" means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods; and

"*unsolicited commercial electronic message*" means an electronic message which is sent for commercial and marketing purposes to an electronic address without the consent of the recipient or against the explicit rejection of the recipient, using an internet access service supplier and, to the extent provided for under the domestic laws and regulations of each Party, other telecommunications service.

ARTICLE 55
Scope

1. This Section shall apply to measures adopted or maintained by a Party affecting trade by electronic means.

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2. Nothing in this Section shall be construed to limit the Parties' right to regulate or to introduce new regulations to meet legitimate policy objectives.

ARTICLE 56
General Provisions

1. The Parties recognize the economic growth and opportunity provided by the increasing use of electronic commerce in trade, in particular for businesses and consumers, the importance of the need to create an environment of trust and confidence in its use.

2. The Parties recognize that electronic commerce may increase trade opportunities and contribute to economic growth, and underscore the importance of promoting the use of electronic technologies in trade in order to minimize the costs and facilitate trade.

ARTICLE 57
Customs Duties

1. No Party may impose a customs duty on electronic transmissions, consistent with the WTO Ministerial Decision of 13 December 2017 in relation to the Work Programme on Electronic Commerce.

2. Each Party reserves the right to adjust its practice referred to in paragraph 1 in accordance with any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

3. For greater certainty, the provision of paragraph 1 does not prevent a Party from imposing an internal tax or other internal charge on a delivery transmitted by electronic means, provided that the tax or charge is imposed in a manner consistent with this FTA.

ARTICLE 58
Non-discriminatory Treatment of Digital Products

1. No Party may accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of the other Party, or to digital products of which the author, performer, producer, developer, or owner is a person of the other Party than it accords to other like digital products.[8]

2. The Parties understand that this Article does not apply to subsidies or grants provided by a Party including government-supported loans, guarantees, and insurances.

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[8] For greater certainty, to the extent that a digital product of a non-Party is a "like digital product", it will qualify as an "other like digital product" for the purposes of this paragraph.

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3. This Article does not apply to any measure affecting broadcasting.

ARTICLE 59
Electronic Authentication and Certification Services

1. Except in circumstances otherwise provided for under its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. Neither Party shall adopt or maintain measures for electronic authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for that transaction;

(b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of electronic transactions or electronic communications that have significant relevance to those transactions, the method of authentication meets certain performance standards or is based on a specific electronic certificate issued by a supplier of certification services accredited or recognized in accordance with the Party's laws and regulations provided that the requirement serves a legitimate policy objective.

4. Each Party shall, in accordance with its legislation on electronic authentication and certification services, endeavour to facilitate the procedure of accreditation or recognition of suppliers of certification services, which have already obtained accreditation or recognition under the legislation of the other Party.

ARTICLE 60
Personal Data Protection

1. The Parties recognize the economic and social benefits of protecting the personal data of users of electronic commerce that contributes to enhancing consumer confidence in electronic commerce.

2. Each Party shall, in a manner it considers appropriate, protect the personal data of the users of electronic commerce. Personal data of the users of electronic commerce can only be shared with the other Party with the consent of the users or in accordance with the conditions provided under Parties' respective domestic legislation.

3. Each Party shall:

(a) adopt or maintain a domestic legal framework that provides for the protection of the personal data of the users of electronic commerce;

(b) ensure that service providers and intermediary service providers take all necessary technical and administrative measures for the protection of personal data.

4. Each Party shall publish information on the personal data protections it provides to users of electronic commerce, including how:

(a) individuals can pursue remedies; and

(b) business can comply with any legal requirements.

5. Recognising that the Parties may take different legal approaches to protecting personal data, each Party should encourage the development of mechanisms to promote compatibility between these different regimes. These mechanisms may include the recognition of regulatory outcomes, whether accorded autonomously or by mutual arrangement, or broader international frameworks. To this end, the Parties shall endeavour to exchange information on any such mechanisms applied in their jurisdictions and explore ways to extend these or other suitable arrangements to promote compatibility between them.

ARTICLE 61
Paperless Trading

The Parties shall endeavour to:

(a) make trade administration documents available to the public in electronic form; and

(b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents, in accordance with its domestic laws and regulations.

ARTICLE 62
Cooperation on Electronic Commerce

Recognising the global and inter-connected nature of electronic commerce, the Parties shall endeavour to:

(a) work together to assist small and medium enterprises to overcome obstacles encountered in the use of electronic commerce;

(b) recognise the certificates of electronic authentication issued to the public and facilitate cross-border certification services, in accordance with its domestic laws and regulations;

(c) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:

(i) personal data protection;

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(ii) consumer protection, consumers' right of withdrawal and improvement of consumer confidence in electronic commerce;

(iii) the liability of intermediary service providers with respect to the transmission or storage of information;

(iv) the treatment of unsolicited commercial electronic messages;

(v) customs model and practices in electronic commerce; and

(vi) any other issues relevant for the development of electronic commerce.

(d) encourage cooperation in the area of transport and logistics services for the express delivery of goods supplied by e-commerce, including through;

(i) promoting and facilitating partnerships among e-retailers and logistics players;

(ii) exchanging information, where possible and practicable including rates, on express delivery services provided in and from its territory.

ARTICLE 63
Online Consumer Protection

1. The Parties recognize the importance of adopting and maintaining transparent and effective measures to protect consumers from fraudulent and deceptive commercial practices as well as measures conductive to the development of consumer confidence when they engage in electronic commerce.

2. To this end, each Party shall adopt or maintain provisions regarding consumer protection in their domestic laws to proscribe fraudulent and deceptive commercial practices that cause harm to consumers engaged in electronic commerce.

3. The Parties shall ensure that consumers are provided with the information regarding their rights stemming from the consumer protection legislation, including the information regarding privacy rules and alternative dispute resolution mechanisms.

4. The Parties shall endeavour to promote the cooperation between their respective national consumer protection bodies or other relevant bodies on activities related to cross-border electronic commerce in order to enhance consumer welfare and confidence.

5. Each Party's national consumer protection enforcement bodies shall endeavour to cooperate with those of the other Party, in appropriate cases of mutual concern, in the enforcement of their respective laws related to consumer protection in order to prevent or detain fraudulent and deceptive commercial practices in electronic commerce.

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ARTICLE 64
Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

   (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to stop such messages;

   (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or

   (c) otherwise provide for the minimization of unsolicited commercial electronic messages.

2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented pursuant to paragraph 1.

ARTICLE 65
Electronic Supply of Services

The Parties affirm that measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Protocol III (Trade in services) which are subject to any exceptions or limitations and restrictions set out in Annex I (Schedules of Specific Commitments) that are applicable to such obligations.

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SECTION VI
CO-PRODUCTION ON FILM OR TV SERIES

ARTICLE 66
Objective

Recognising that co-production may serve the development of film or TV series production and encourage further development of the cultural and technological ties between the Parties, this Section aims at facilitating the co-production on film or TV series between the Parties by establishing the rules.

ARTICLE 67
Scope and Definitions

1. This Section applies to measures by the Parties affecting co-productions of films or TV series.

2. For the purpose of this Section:

   "competent authorities" means both competent authorities responsible for the implementation of this Section or either competent authority in regard to its own country, as the case may be. The competent authorities are:

   For Turkey: Ministry of Culture and Tourism, General Directorate of Cinema, or its successor,

   For Montenegro: Film Center of Montenegro, or its successor;

   "co-producer" means a person or an entity established in the territory of the Parties by whom the arrangements necessary for the making and financing of the cinematographic work and providing other conditions are undertaken, and which are bound by a co-production contract;

   "co-production" means a cinematographic work, with or without accompanying sounds, regardless of length or genre, including fiction, animation and documentaries, which is intended to be shown first in cinemas or on TV channels.

ARTICLE 68
Approval and Procedures

1. Co-production of films or TV series pursuant to this Section shall be approved by the competent authorities of the Parties in accordance with their internal laws and regulations.

2. The application for the approval of a co-production under this Section shall follow the procedures set out in Appendix, which constitutes an integral part of this Section.

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However, competent authorities may, in a given case, jointly authorize co-producers to act in accordance with ad-hoc rules, which they jointly approve.

3. Approval shall not be given to a project where the co-producers are linked by common management or control, except to the extent that such an association has been established specifically for the purpose of the co-production project itself.

4. Approval of a proposal for the co-production of a film or TV series by the competent authorities does not imply any permission or authorization to show or distribute the film or TV series thus produced.

5. Co-production of films or TV series shall be made, processed, dubbed or subtitled, up to creation of the first release print in the countries of the participating co-producers. However, if a scenario or the subject of the film or TV series so requires, location shooting, exterior or interior, in a country not participating in the co-production may be authorized by the competent authorities. Similarly, if processing, dubbing or subtitling services of satisfactory quality are not available in a country participating in the co-production, the competent authorities may authorize the procurement of such services from a supplier in a third country.

ARTICLE 69
Requirements to Co-producers

1. Failure of a Party's co-producer to fulfil the conditions according to which that Party has approved a co-production or a material breach of the co-production Section by a Party's co-producer may result in the other Party revoking the co-production status of the production and the attendant rights and benefits.

2. In order to qualify for the benefits of co-production, the co-producers shall provide evidence to their respective competent authority that they have the proper technical organization, adequate financial support and necessary professional qualifications to bring the production to a successful conclusion.

3. To be entitled to the benefits under this Section, co-producers shall comply with the legislation and regulations of each of the Parties involved.

ARTICLE 70
Requirements for Natural Persons

1. The producers, co-producers, authors, scriptwriters, performers, directors, professionals and technicians participating in co-productions, must be citizens of the Parties in accordance with the national legislation in force of those Parties.

2. The producers, co-producers, authors, scriptwriters, performers, directors, professionals and technicians participating in co-productions, may live in third countries.

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3. Should the co-production so require, the participation of professionals who do not fulfil the conditions provided by paragraph 1 may be permitted, only in exceptional circumstances, and with the approval of the competent authorities.

4. Each Party must fulfil the obligations concerning social security liabilities of the production crew who are citizens of the Parties in accordance with their respective social security legislation.

5. Use of any other languages in a co-production other than the languages permitted according to the national legislation of the Parties may be added to the co-production if the screenplay requires it.

ARTICLE 71
National Treatment

1. Any co-production produced in accordance with this Section shall be considered by the competent authorities as a national film or national TV series, subject to national legislation in force of the Parties. Such co-productions shall be entitled to the benefits by virtue of each Party's national legislation or by those which may be decreed by each Party. These benefits accrue solely to the co-producer of a Party that grants them.

2. In all matters concerning the marketing or export of a co-produced film or TV series, each Party will accord the co-produced film or TV series the same status and treatment as a domestic production, subject to national legislation in force of that Party.

ARTICLE 72
Marketing in Third Countries with Quota

1. If a co-produced film or TV series is marketed in a country that has quota regulations with regard to both Parties, it shall be included in the quota of the country which is the majority co-producer. In the event that the contributions of the co-producers are equal, the co-production shall be included in the quota of the Party of which the director of the co-production is a citizen.

2. If a co-produced film or TV series is marketed in a country that has quota regulations with regard to one of the Parties, the co-produced film or TV series shall be marketed by the Party which is not subject to the quota.

ARTICLE 73
Co-production Credits and Festivals

1. All co-produced films or TV series shall be identified as "Turkish-Montenegrin co-production" or "Montenegrin-Turkish co-production".

2. Such identification shall appear in a separate credit title, in all commercial advertising and promotional material, whenever co-produced films or TV series are shown at any public performance.

3. Unless otherwise agreed upon by the competent authorities, co-produced films or TV series shall be entered in international festivals by the Party of the majority co-producer.

4. Co-produced films or TV series produced on the basis of equal contributions shall be entered in international festivals by the Party of which the director is a citizen.

ARTICLE 74
Contribution in Co-Productions

1. The respective financial contribution of the producers of the Parties may vary from ten (10) to ninety (90) per cent for each co-produced film or TV series.[9] In addition, the co-producers shall be required to make an effective technical and creative contribution, proportional to their financial investment in the co-produced film or TV series. The technical and creative contribution should be comprised of the combined share of authors, performers, technical-production personnel, laboratories and facilities.

2. In the event that the Turkish co-producer or the Montenegrin co-producer is composed of several production companies, the financial contribution of each company shall not be less than five (5) percent of the total budget of the co-produced film or TV series.

3. In the event that a producer from a third country is authorized to participate in the co-production its financial contribution shall not be less than ten (10) percent. In the event that the co-producer from a third country is composed of several production companies, the financial contribution of each company shall not be less than five (5) percent of the total budget of the co-produced film or TV series.

ARTICLE 75
Entry and Temporary Stay of Natural Persons and Film or TV Series Equipment

1. Subject to their legislation, each Party shall facilitate the entry and temporary stay of the artistic and technical personnel and the performers engaged by a co-producer of the Parties involved for the purpose of the co-production.

2. The Parties shall facilitate the entry and re-export of any film or TV series equipment necessary for the production of co-produced films or TV series under this Section, subject to their legislation.

ARTICLE 76
Profit Distribution

The distribution of profits between co-producers should be proportionate to the contribution of each co-producer.

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[9] For Turkey, if the minimum contribution is less than twenty (20) per cent, the status of the co-production may be subject to the authorization of the competent authority of Turkey.

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ARTICLE 77
Intellectual Property Rights

1. For the purposes of this Section and the provisions set forth in paragraph 3 (a) of the Appendix hereto, the co-producers shall ensure that, to the extent any intellectual property rights are embodied in any element of the cinematographic work, these rights will be within the authorship and/or rightholdership according to the domestic laws of the Parties of persons who participated in its creation.

2. Allocation of intellectual property rights in a co-produced film or TV series, including authorship/rightholdership and licensing thereof, shall be made in the co-production contract.

3. Each co-producer shall have free access to all the original co-production materials and the right to duplicate or print there from, but not the right to any use or assignment of intellectual property rights in the said materials, except as determined by the co-producers in the co-production contract.

4. Each co-producer shall be an owner on a joint basis of the physical copy of the original negative or other recording media in which the master co-production is made, not including any intellectual property rights that may be embodied in the said physical copy, except as determined by the co-producers in the co-production contract.

5. Where the co-production is made on film negative, the negative will be developed in a laboratory chosen mutually by the co-producers, and will be deposited therein, on an agreed name.

6. Each co-producer shall be entitled to retain a copy of the original of initial record of the cinematographic work, provided that in respect of the rights in its creation and use paragraph 1 and 2 of this Article shall apply.

7. The co-production contract must guarantee to each co-producer joint ownership of the original picture and sound negative. The contract shall include the provision that this negative shall be kept in a place mutually agreed by the co-producers, and shall guarantee them free access to it.

8. Co-producers must give a subtitled copy of the film or TV series to each Party following the production of the film or TV series.

ARTICLE 78
Sub-committee on Film or TV Series Co-production

1. For the purpose of the effective implementation and operation of this Section, the Sub-committee on film or TV series co-productions comprised from the representatives of the competent authorities of each Party and co-chaired by the Parties (hereafter referred to in this Article as "the Sub-committee") is hereby established. The function of the Sub-committee shall be:

(a) reviewing and monitoring the implementation and operation of this Section with respect to films or TV series co-production;

(b) discussing issues related to film or TV series co-productions with a view to enhancing trade relations between the Parties and promoting efficient and transparent administration of their procedures for application for, and approval of, a co-production under this Section;

(c) proposing initiatives to further promote the cooperation in the area of film or TV series production;

(d) reporting its findings and outcome of its discussions to the Joint Committee; and

(e) carrying out other tasks as may be assigned by the Joint Committee.

2. The activities of the Sub-committee are without prejudice to existing or future relations between the competent authorities of the Parties within the scope of their competence.

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Appendix to Section on Film or TV Series Co-Production

Referred to in Article 68.2

Rules of Procedures

1. Applications for qualification of a film or TV series for co-production benefits must be conveyed to the competent authorities at least sixty (60) days prior to the commencement of shooting or key animation of the film or TV series. The applications shall be reviewed by the competent authority within thirty (30) days after the Party with the highest proportion of financial contribution expresses its opinion. The decision shall be notified to the applicants within ten (10) days. If the Party with the highest proportion of financial contribution as well as the competent authority give their affirmation, the co-production shall be considered as approved.

2. The competent authorities shall notify each other of their decision regarding any such application for co-production within thirty (30) days from the date of submitting the complete documentation listed in this Appendix.

3. Applications must be accompanied by the following documents in English language:

   (a) A proof of license arrangements with respect to intellectual property rights, of any sort, including in particular copyright and related rights ("related rights" shall be understood as including, inter alia, film or TV series producers' rights, performers' rights, phonogram producers' rights and broadcasters' rights, communication to public rights), embodied in, or arising from, a co-production, to an extent sufficient for purposes of fulfilling the objectives of the co-production contract, including clearance arrangements for public performance, distribution, broadcast, making available by internet or otherwise, and sale or rental of physical or electronic copies of the co-production in the territories of the Parties' home countries as well as in third countries, and including copyright and related rights clearance with respect to any literary, dramatic, musical or artistic work which has been adapted by the applicant for purposes of the co-production;

   (b) The signed co-production contract, which is subject to the approval of the competent authorities.

4. The co-production contract must make provision for the following issues:

   (a) The title of the co-produced film or TV series, even if provisional;

   (b) The name of the writer or the person responsible for adapting the subject if it is drawn from a literary source;

   (c) The name of the director (a safety clause is permitted for his/her replacement, if necessary);

   (d) The budget of the co-produced film or TV series;

   (e) The amount of the financial contributions of the co-producers;

(f) The financial undertakings of each producer in respect of the percentage apportionment of expenditures with regard to development, elaboration, production and post-production costs up to the creation of the answer print;

(g) The distribution of revenue and profits including the sharing or pooling of markets;

(h) The respective participation of the co-producers in any costs which exceed the budget or in the benefits from any savings in the production cost;

(i) Allocation of intellectual property rights in a co-produced film or TV series, including authorship or rightholdership and licensing thereof;

(j) A clause in the contract must recognise that the approval of the film or TV series, entitling it to benefits under the agreement, does not obligate the competent authorities of each Party to permit the public screening of the film or TV series. Likewise, the contract must set out the conditions of a financial settlement between the co-producers in the event that the competent authorities of each Party refuse to permit the public screening of the film or TV series in that Party or in third countries;

(k) Breach of the co-production contract;

(l) A clause which requires the major co-producer to take out an insurance policy covering all production risks;

(m) The approximate starting date of shooting;

(n) The list of required equipment (technical, artistic or other) and personnel, including nationality of personnel and the roles to be played by the performers;

(o) The production schedule;

(p) A distribution agreement, if one has been concluded;

(q) The manner in which the co-production shall be entered in international festivals;
(r) Other provisions required by the competent authorities.

In addition to the agreement, the following documents must be sent to the competent authority.

(a) A synopsis of the co-produced film or TV series;

(b) Treatment;

(c) The full text of screenplay;

(d) The list of technical and artistic personnel that produce the co-production;

(e) Curriculum vitae of the director;

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(f) A detailed budget and financing plan;

(g) The document of intellectual property transfer for commercial use of the production;

(h) Production schedule of the co-produced film or TV series;

(i) Nationality of personnel and the roles to be played the performers.

5. The co-producers will provide any further documentation and information, which the competent authorities deem necessary in order to process the co-production application or in order to monitor the co-production or the execution of the co-production agreement.

6. Any material provisions in the original co-production contract may be amended subject to prior approval by the competent authorities.

7. The replacement of a co-producer is subject to the prior approval by the competent authorities.

8. Competent authorities have to be informed about the participation of a producer from a third country in the co-production.

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SECTION VII
FINAL PROVISIONS

ARTICLE 79
Entry into Force

This Protocol shall enter into force on the first day of the second month, following the date of the receipt of the latter written notification through diplomatic channels, by which the Parties inform each other that all necessary requirements foreseen by their national legislation for the entry into force of this Protocol, have been fulfilled.

IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Protocol.

DONE at Ankara, on 17th of July, 2019, in two originals, each in the Turkish, Montenegrin and English languages, all texts being equally authentic. In case of any divergence in the interpretation of this Protocol, the English text shall prevail.

For the Republic of Turkey	For Montenegro
Ruhsar PEKCAN	Dragica SEKULIĆ
Minister of Trade	Minister of Economy