

Annex on Energy and Mining Related Services

[AU/IS/NO/EU propose; ~~EU considering~~: Article I - Scope

1. This Annex shall apply to measures adopted or maintained by a Party affecting trade in energy and mining related services irrespective of the energy source or mineral, technology used, whether the energy source is renewable or non-renewable, and whether the service is provided onshore or offshore. [EU/IS propose: AU oppose: This Annex shall not apply to measures adopted or maintained by a Party affecting trade in services related to nuclear energy.]
2. Nothing in this Annex affects the sovereignty and sovereign rights¹ of a Party over its energy and mineral resources. This Annex does not apply to the granting of concessions or licences for the exploration, development or [IS oppose: exploitation] [IS propose: utilization] of a Party's energy resources or minerals.
3. For greater certainty, nothing in this Annex affects the right of a Party to
 - (a) determine rules governing property ownership of energy sources and minerals,
 - (b) determine the geographical areas to be made available for exploration, development and [IS oppose: exploitation] [IS propose: utilization] of its energy and mineral resources,
 - (c) determine the optimisation of their recovery and the rate at which its energy sources and minerals may be depleted or otherwise [IS oppose: exploited] [IS propose: utilized],
 - (d) specify and enjoy any taxes, royalties or other financial payments payable by virtue of such exploration and [IS oppose: exploitation] [IS propose: utilization],
 - (e) regulate the environmental and safety [EU/IS propose: public health and cultural heritage] aspects of such exploration, development and [IS oppose: exploitation] [IS propose: utilization], and
 - (f) participate in such exploration and [IS oppose: exploitation] [IS propose: utilization], inter alia, through direct participation by the government or through [state enterprises].]

[AU/EU/IS/NO propose: Article II- Definitions

For the purpose of this Annex:

- (a) **Energy related services** means
 - (i) [AU/NO/IS/EU proposes: ~~EU considering~~: services supplied to a juridical person engaged in the exploration, [IS oppose: exploitation] [IS propose: utilization], development, production, transmission, storage or distribution of energy or energy sources].

¹ Under international law, a state has sovereignty over its own territory and its territorial sea with limited exceptions. On the other hand, within its continental shelf a state has sovereign rights for the specific purpose of exploring and exploiting its natural resources and within its exclusive economic zone a state has sovereign rights for specifically exploring, exploiting, conserving and managing natural resources. These distinctions between sovereignty and sovereign rights are why both terms have been included.

- (ii) [**EU propose: AU/IS/NO considering:** services that contribute to more efficient energy use by managing and restraining the growth in energy consumption through delivering more output for the same energy input or the same output for less energy input and that are supplied to a natural or juridical person.]

AU/EU/IS/NO: We are open to further work to refine the definition of energy related services, and propose to revert to a discussion about how to target relevant services, where relevant, whether in the definition, members' individual schedules, or elsewhere in this annex.

- (b) [**AU/EU propose: EU/NO considering: Mining related services** means services supplied to a juridical person engaged in activities in the supply chain for minerals from the exploration of those minerals in the territory of a Party through to their delivery either to facilities that use minerals as inputs to a production process in that Party or to the point of export from that Party; or the importation of those minerals into the territory of a Party through to their delivery to facilities that use minerals as inputs to a production process in that Party.]

AU/IS/NO: We recognise these definitions may overlap with the Annexes on Maritime and Transport Services. It is not our intention to import a discussion on scope of those activities in an energy and mining context. The definitions proposed outline our general approach; we suggest that they be revisited once the scope of the Maritime and Transport Services Annexes is further established.

[AU/EU/IS/NO propose Article III - Cross-border Trade and Commercial Presence

With respect to trade in services as defined in Article I-1:(2) (a) – (c) [Mode 1, 2, and 3], the schedule of each Party includes commitments pursuant to Article I-3 (Market Access) and I-4 (National Treatment), subject to any terms, limitations, conditions, and qualifications set out therein, for the supply of the following energy and mining related services:

- architectural services [CPC 8671],
- engineering services [CPC 8672],
- integrated engineering services [CPC 8673],
- management consulting services [CPC 865],
- services related to management consulting services [CPC 866],
- site formation and clearance services [CPC 5113] (including geothermal drilling services),
- [**AU considering:** maintenance and repair of equipment [CPC 633 + 8861- 8866],]
- construction and related engineering services [CPC 51],
- rental/leasing services without operator related to ships [CPC 83103],
- rental/leasing services without operator related to other transport equipment [CPC 83101+83102],

- rental/leasing services without operator related to other machinery and equipment [CPC 83106+83109],
- technical testing and analysis services [CPC 8676],
- services incidental to mining [CPC 883, 5115],
- related scientific and technical consulting services [CPC 8675],
- environmental services [CPC 94],
- other lodging services n.e.c. [CPC 64199] (lodging offshore),
- maritime domestic transport services [CPC 7212],
- maritime towing and pushing services [CPC 7214],
- bulk storage services of liquids or gases [CPC 7422],
- services incidental to energy distribution [CPC 887],
- transportation of petroleum and natural gas [CPC 7131],
- wholesale trade services of solid, liquid and gaseous fuels and related products [CPC 62271],
- retail sales of motor fuel [CPC 613],
- retail sales of fuel oil, bottled gas, coal and wood [CPC 63297],
- sales on a fee or contract basis of fuels, metals, ores, timber, building materials and industrial and technical chemicals [CPC 62113],
- repair services incidental to metal products, machinery and equipment [CPC 886],
- computer and related services [CPC 84],
- research and development services [CPC 85], and
- **[IS propose: any other services related to geothermal energy]].**

[EU/IS propose, NO considering: Article IV- Supply of Services by Natural Persons

With respect to trade in services as defined in Article I-1(2) (d) (Mode 4), in accordance with Article 5 of the Annex on Movement of Natural Persons, each Party shall allow the entry and temporary stay of [contractual service suppliers and **[IS propose: /or]** independent professionals] for the supply of energy [**AU propose: and mining]** related services at least to the extent of a commitment undertaken in accordance with Article III of this Annex.^{2]}

[IS/NO/EU propose: Article V- Scheduling of Commitments

The terms, limitations, conditions and qualifications as referred to in Article III [**AU/IS/EU propose: shall**][**AU/IS/EU propose, NO considering: may**] be set out separately in each Party's schedule, in a manner that shows improvements to the commitments scheduled under the CPC categories listed in Article III.]

[IS/NO propose: Article VI - Competition

² If a Party sets a reservation in accordance with Article III, the reservation also constitutes a reservation to this Article to the extent that the measure sets out in or permitted by the reservation affects the treatment of a natural person entering and staying in the territory of the other Party.

1. Each Party shall work to alleviate market distortions and barriers to competition in the supply of energy related services, including the distortions originating from the dominant position of [national] energy companies.
2. Each Party shall ensure that it has and enforces such laws and regulations as are necessary and appropriate to address anti-competitive conduct in the energy related services markets.
3. Each Party shall ensure that their respective competition law and policy are enforced in a transparent, timely, objective and non-discriminatory manner.]

[IS/NO propose: Article VII - Procurement of energy related services]

[AU proposes: Article VIII: Local Content Requirements]

AU: If needed, the wording of Article VIII will be reviewed and updated to align with the language in Article X.3 of the Annex on Localisation Provisions.

1. Subject to paragraphs 2 and 3, any measures affecting trade in energy and mining services that a Party maintains, on the date this Agreement [is concluded], in connection with the exploration, development or exploitation of energy sources or minerals:
 - (a) that accord, for the modes of supply identified in Article I-1:2 (a), (b) and (c) [Mode 1, 2, and 3], to services and service suppliers of any other Party treatment less favourable than it accords to its own like services and service suppliers; or
 - (b) (i) [through commercial presence] that impose or enforce any requirement or enforce any commitment or undertaking; or
(ii) through commercial presence, that condition the receipt or continued receipt of an advantage on compliance with any requirement to achieve a given level or percentage of domestic content; or to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

shall be set out in Section B of Part I and in Part II of that Party's schedule in accordance with Article II-1 and Article II-2 paragraphs 2 and 3 and Article X.4 paragraphs 1 and 2 [Scheduling of localisation commitments].

2. Paragraph 1 does not apply to any measure that a Party maintains on the date this Agreement [is concluded] with respect to an entry in Section A of Part I of its Schedule that is not an energy or mining-related entry.
3. Following the entry into force of this Agreement, and where a Party relies on an energy or mining-related entry in Section A of Part I of its Schedule to adopt a measure otherwise

inconsistent with paragraph 1, the relevant measure shall be deemed to be set out in Section B of that Party's Schedule³.

[X] Exceptions to Paragraph 1 (b): Paragraphs will be added to include exceptions to the obligations in Paragraph 1 (b). It is envisaged these will include those exceptions included in the proposal on localisation with some additional proposals, subject to further discussions including in the localisation context. The general exceptions in the core text will apply to paragraph 1].

[AU proposes: Article IX: Foreign Capital Limitations

1. With respect to measures affecting trade in services as defined in Article I-1:2(c) [Mode 3], any limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment for entities/juridical persons supplying services incidental to mining [CPC 883, 5115] shall be set out in Section B of Part I and in Part II of each Party's schedule in accordance with Article II-1 and Article II-2 paragraphs 2 and 3.]

[AU proposes: Article X: Foreign Partnership or Management Participation Limitations

1. No Party may, with respect to entities supplying services incidental to mining [CPC 883, 5115] through a commercial presence, restrict the nationality of partners or of senior managerial or other essential personnel.]

[AU proposes: Article XI: Joint-venture requirements

1. With respect to measures affecting trade in services as defined in Article I-1:2(c) [Mode 3], any restrictions or requirements for specific types of legal entity, joint venture [or joint operation] through which a service supplier may supply services incidental to mining [CPC 883, 5115] shall be set out in Section B of Part I and in Part II of each Party's schedule in accordance with Article II-1 and Article II-2 paragraphs 2 and 3.] .

[AU proposes: Article XII: Economic Needs Tests

1. No Party may adopt or maintain discriminatory economic needs tests, as a requirement for the supply of services incidental to mining [CPC 883,5115] through the modes of supply identified in Article I-1:2 (a), (b) and (c) [Mode 1, 2, and 3].⁴

³ For greater certainty, a measure will not be deemed where it is adopted pursuant to a Section A entry applies that is not an energy or mining related entry.

⁴ Nothing in this paragraph shall be construed to prevent a Party applying economic needs tests in a manner which accords national treatment to suppliers of services incidental to mining [CPC 883,5115] of any other Party within the meaning of Article I:4.