

Getting to Know the EPA is one of a series of guides produced by the Caribbean Regional Negotiating Machinery (CRNM) on the subject of the Economic Partnership Agreement (EPA) between African, Caribbean and Pacific States and Europe. This Frequently Asked Questions (FAQ) guide is designed to clarify basic facts about the EPA.

Getting to Know the EPA : Provisions on Services and Investment

Does the EPA text include provisions on Services and Investment?

Yes. The EPA contains a comprehensive section on Investment and Services as well as common rules on E-commerce. It provides a special provision for the Bahamas and Haiti to join the Agreement but they must submit their commitments on investment and services within six months.

Why does the EPA include provisions on Investment?

While European investments into CARIFORUM have generally increased over the last decade, investment flows in recent years have been stagnant in most non-tourism sectors. The Parties agreed to investment liberalization in the EPA, in order to establish rules that facilitate the easier flow of investment across the borders of the European Union and all CARIFORUM countries, and a reduction in discriminatory treatment of foreign investors within their respective territories, and greater predictability and transparency. Such an agreement will benefit CARIFORUM countries in terms of transfer of technology, creation of jobs, quality products and services; while creating a more favourable investment climate for their investors in the European Union. The EU is a significant outward investor, with 9 EU members ranking in the top twenty leading outward investor economies. Therefore a properly managed relationship with the EU should create viable opportunities for CARIFORUM, and stimulate growth and dynamism in EU investment flows to the Caribbean.

What are the provisions on Investment in the Agreement?

The EPA rules on investment prescribe the conditions of market access in manufacturing, mining, agriculture and forestry, and service sectors in European and CARIFORUM states. Except for some sensitive sectors, both the EU and CARIFORUM have liberalized several areas of manufacturing. However, public services and utilities and other sensitive sectors have not been opened to foreign participation. CARIFORUM has maintained special reservations for small and medium enterprises in some sectors. The EU also has excluded a few sectors and maintains reservations in some sectors for some of its newer member states.

In the European Union (EU), CARIFORUM investors will be treated in the same way as nationals of the European Union. This means that CARIFORUM investors within the EU would be treated no less favorably than domestic EU investors within the EU, and vice versa. In addition, most-favoured nation treatment will apply, which means that investors from a 'third country', a country that is not Party to the EPA, will not be given better treatment than CARIFORUM investors within the EU, and vice versa.

The EPA includes provisions which guarantee that investment liberalization does not result in high social and environmental costs. This has been facilitated through the inclusion of rules that ensure that investors safeguard the Environment and maintain high labour and occupational health and safety standards. Furthermore, it forbids investors from engaging in corruption to get special concessions from public officials.

Why does the EPA include provisions on services?

Given the economic importance of the services sector to both the Caribbean and the European Union, the volume of trade in services between the two regions, and the inter-dependence of the services sector with manufacturing and agriculture, the EPA necessarily includes rules for the treatment of services suppliers and the provision of services.

Sixty percent of all CARIFORUM services exports to the EU are in tourism and travel-related services. CARIFORUM has negotiated rules and market access concessions on services in the EPA as the Services sector, especially the knowledge-based services sub-sector, presents the best prospect for economic diversification and global repositioning because of its value-added potential. For CARICOM (excluding Trinidad and Tobago), services account for approximately 62% of total exports, and in the case of the OECS countries, averages approximately 80% of total exports. Services exports therefore account for the major share of total exports of individual CARICOM countries, with the exception of Trinidad and Tobago, Guyana, Belize and Haiti. Services output relative to total GDP for CARICOM countries was over 60% between 1996 and 2004 for the MDCs and over 80% for the LDCs.

The EU has a growing economy and represents a viable market of approximately 457 million persons in 27 countries, with a GDP per capita (purchasing power standard) of US\$ 23,500.80 (2004). The EU has great potential to absorb increased services exports from CARIFORUM as its import penetration rates for goods and services have increased between 2000 and 2005.

What are the provisions on Services in the Agreement?

In the case of Services, there are specific provisions on the regulatory framework and cooperation for several key sectors, notably:

- Tourism
- E-commerce;
- Courier;
- Telecommunications;
- Financial services; and
- Maritime transport;
- Cultural and Entertainment Services

With respect to professional services, there are also provisions for cooperation and mutual recognition of qualifications as well as technical assistance for the tourism sector. With respect to the movement of services suppliers between Europe and the Caribbean, the EPA includes special provisions for Short Term Visitors for Business Purposes. This allows CARIFORUM nationals to visit the EU for brief periods for business reasons related to research and design, marketing, training, trade fairs and sales. While the EPA does not commit the Parties to the issuing visas, both sides have committed to making movement across borders easier.

Does the Agreement on Services and Investment include provisions for assistance of CARIFORUM States?

Yes. The EPA has complementary development and trade components. The Agreement on Services and Investment includes provisions on development cooperation from the EU to address a range of needs in the Caribbean such as developing regulatory regimes, building the capacity of regional services firms, market intelligence, interaction with EU firms, among other activities. In sector specific sections of the agreement there are also tailored cooperation mechanisms such as environmental management and equivalency in sustainable tourism standards in the tourism section, and cultural exchanges and dialogue, in the Protocol on Cultural Cooperation.

Human resource development in the Caribbean is another focus of the provisions on Tourism which provides for assistance and training to service suppliers and support for training institutions. In the services agreement, there are also provisions for cooperation and mutual recognition of qualifications.

Which sectors have been opened up by the EU to CARIFORUM?

The EU has opened more than 90 percent of the sectors listed in the World Trade Organisation (WTO) W/120 Services Sectoral Classification List, which is based on United Nations Central Classification (UN CPC) categories and used as the basis for negotiations under the in the WTO. These sectors range from Business services, Communications, Construction, Distribution, Environmental, Financial, Transport, Tourism and Recreation services. This liberalization has been extended across the full range of modes of supply, which are defined in the table below. The EPA Services Chapter, like several Free Trade Agreements (FTAs), consolidates Modes 1 and 2 as cross-border services; however, for market access commitments, CARIFORUM has maintained these as separate modes.

Modes of Supply in Services Trade

Mode 1: Cross-border supply is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);
Mode 2: Consumption abroad refers to situations where a service consumer moves into another Member's territory to obtain a service;
Mode 3: Commercial presence means that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains); and
Mode 4: Presence of natural persons refers to persons of one Member entering the territory of another Member to supply a service.

In Mode 1 and Mode 2 the EU has liberalized the vast majority of its sectors. In the case of investment (Mode 3) the EC has liberalized almost all sectors for CARIFORUM firms in the European Union with only some exclusions and limitations in a few sectors, mainly applicable to the new EU Member States.

Sectors Liberalized by the EU for Temporary Entry by Contractual Services Suppliers from Cariforum (employees of services firms)

- 1) Legal advisory services in respect of international public law and foreign law (i.e. non-EU law)
- 2) Accounting and bookkeeping services
- 3) Taxation advisory services
- 4) Architectural services
- 5) Urban planning and landscape architecture services
- 6) Engineering services
- 7) Integrated Engineering services
- 8) Medical and dental services
- 9) Veterinary services
- 10) Midwives services
- 11) Services provided by nurses, physiotherapists and paramedical personnel
- 12) Computer and related services
- 13) Research and development services
- 14) Advertising services
- 15) Market Research and Opinion Polling
- 16) Management consulting services
- 17) Services related to management consulting
- 18) Technical testing and analysis services
- 19) Related scientific and technical consulting services
- 20) Maintenance and repair of equipment, including transportation equipment, notably in the context of an after-sales or after-lease services contract
- 21) Chef de cuisine services
- 22) Fashion model services
- 23) Translation and interpretation services
- 24) Site investigation work
- 25) Higher education services (only privately-funded services)
- 26) Environmental services
- 27) Travel agencies and tour operators' services
- 28) Tourist guides services
- 29) Entertainment services other than audiovisual services

In Mode 4, though certain conditions remain for European and Caribbean services suppliers, the EC has granted market access for Caribbean professionals in 29 sectors for employees of Caribbean firms or Contractual Service Suppliers (CSS) to be able to enter the EU to supply services for up to 6 months in a calendar year. This represents a significant improvement when compared to the EC's offer in the WTO.

Sectors Liberalized by the EU for Temporary Entry by Independent Professionals (self-employed persons)

- 1) Legal advisory services in respect of international public law and foreign law (i.e. non-EU law)
- 2) Architectural services
- 3) Urban planning and landscape architecture services
- 4) Engineering services
- 5) Integrated Engineering services
- 6) Computer and related services
- 7) Research and development services
- 8) Market Research and Opinion Polling
- 9) Management consulting services
- 10) Services related to management consulting
- 11) Translation and interpretation services

In addition, independent Professionals or self employed professionals have been granted access to the EU in 11 sectors. Certain conditions still apply, such as economic needs tests but there are no restrictions on the number of service suppliers that may enter the EU market. This level of quota free market access commitment in services is unprecedented in EU services trade relations at the bilateral level and the multilateral level.

Which sectors have been opened by CARIFORUM to the EU?

The sectors that were liberalized by CARIFORUM states include those that have positive development impacts and in which Member States are seeking investment or new technologies as well as sectors that are important to create economic opportunities in outsourcing contracts from European firms. To a large extent, most countries liberalized cross-border trade and investment. However, there is quite limited temporary entry (Mode 4) coverage for contractual service suppliers and independent professionals.

The main sectors that most CARIFORUM states have liberalized in the EPA are: Business services (accounting, architecture, engineering, etc); computer and related; research and development; environmental services; management consultancy; maritime transport; entertainment; tourism; among others. Some of the commitments will be phased-in over time in some member states to address sensitivities at the national level.

Are provisions on Tourism services included in the EPA?

Yes. The EPA delivered specific disciplines on tourism services because of its importance to the social and economic development of both regions, whereas the WTO has been unsuccessful in this regard. Therefore the EPA yielded benefits for the development of CARIFORUM's tourism sector not achieved at the multilateral level. These rules are complemented by a commitment to legally binding relatively open market conditions for each other. For example, The EC has made commitments for travel agencies, tour operators, tourist guides services. CARIFORUM States on the other hand have made commitments in relation to hotels and restaurants, marina services and spa services.

The EPA text establishes a common understanding on the regulatory framework for the tourism sector. The EPA has created institutions such as the CARIFORUM –EC Council and the Committees which deal with specific issues to ensure the implementation of commitments in the Agreement. For example the Joint Committee will facilitate the exchange of information and consultation between officials and other stakeholders on matters pertaining to tourism.

What are benefits of the provisions on Tourism?

The EPA includes measures that would make it easier for EU investors to invest in the Region, apart from the rules on competition mentioned above. It also recognises the export capacity and competitiveness constraints that confront the Region, through provisions aimed at strengthening CARIFORUM firms and institutions, including small firms which are traditionally marginalised in the European and global market by larger international players. For example, there are provisions for programmes to facilitate cooperation between industry associations, and mechanisms to improve access to market information.

With respect to the movement of tourism professionals, the tourism sector is highlighted as one of the priority sectors for dialogue between the relevant professional bodies in the Caribbean and Europe, with a view to signing a mutual recognition agreement (MRA).

Mutual recognition

The initiation of meetings between professional bodies for the negotiation of mutual recognition agreements are scheduled no later than three years after entry into force of the EPA. Such an agreement would essentially be to accept each other's methods of accrediting professionals in the respective educational and certification systems. The rights of access of qualified CARIFORUM professionals to the European services market will not be reduced pending negotiation of MRAs, and CARIFORUM and European professionals will be required to comply with any European industry standards, qualifications and criteria in the territory of the other Party.

Do the EU services commitments also extend to the cultural sector?

Yes. The traditional relationship between the Caribbean and Europe under the Cotonou Agreement was limited to cooperation for cultural develop; however the EPA has successfully secured market access commitments for CARIFORUM in some key areas. In the case of Entertainment services, a sector in which the Caribbean is quite competitive, 27 European states will liberalize Entertainment services (CPC 9619) with some limitations in two states. This level of market access for entertainment **is a first for any trade agreement of the EU**. In the WTO only two EU states have commitments for the temporary movement of contractual service suppliers in entertainment services; and in the EU-Chile Trade Agreement only four states. In the EPA, the activities that are being liberalized by the EU include the whole range of artists and cultural practitioners in music, dance, theatre,

visual arts, as well as sculptors, authors, poets, among others; these are listed by CPC number in the box below. CARIFORUM countries have also made market access commitments, particularly in the audiovisual sector, where they hope to send a clear market signal in order to attract European investment.

EU Services Commitments – Entertainment Services

9619 Entertainment services

- 96191 Theatrical producer, singer group, band and orchestra entertainment services
- 96192 Services provided by authors, composers, sculptors, entertainers & other individual artists
- 96193 Ancillary theatrical services n.e.c.
- 96194 Circus, amusement park and similar attraction services
- 96195 Ballroom, discotheque and dance instructor services
- 96199 Other entertainment services n.e.c.

The EC offer maintain some controls and conditions but there are no quotas or limits on the number of natural persons who can enter under this commitment. Caribbean artists, musicians, and other cultural practitioners and their crews who are registered under businesses will be able to send their members or employees to almost all EU states to supply entertainment services.

Is there any additional concession provided to develop cultural industries in the EPA?

Indeed there is! The **Protocol on Cultural Cooperation** is an innovative and historic convention which provides for greater cooperation in the development of cultural industries. It is designed to complement the market access commitments under Recreational, Cultural and Sporting services. While the Protocol applies across all cultural fronts, there are particularly significant audiovisual provisions. Co-produced audiovisual products and services involving European and Caribbean creative teams will qualify as European works and meet the cultural content rules in all EU states. When co-production treaties are completed between individual EU states and Caribbean states or regions, the Protocol will also make it possible for audiovisual producers from one CARIFORUM country to access funding for creative projects in another country with a co-production treaty. Furthermore, through the Protocol, artists and other cultural practitioners will be able to enter European states to collaborate on projects and upgrade their training for a period up to 90 days in any 12 month period.

The EPA, through this unprecedented Protocol, could be an effective tool in the development of CARIFORUM cultural industries and the region's international competitiveness. For cultural practitioners, the EPA presents opportunities to develop contact networks which could later evolve into viable commercial opportunities.

Will the economic needs tests and other conditions prevent CARIFORUM access to the EU services market?

The economic needs tests (ENTs) and all other conditions which may be applicable are not designed to unjustifiably prevent or impede CARIFORUM access. Rather these conditions and controls are designed to prevent displacement of domestic firms and services suppliers, as well as "over-supply" of a particular service. The EU and CARIFORUM both opted to apply such conditions as deemed necessary to ensure that liberalization does not lead to such displacement in sensitive sectors, and sectors where demand for foreign services suppliers will likely fluctuate. In domestic policy, ENTs may apply to local and foreign services providers, or only to foreign suppliers.

When will the EPA commitments come into effect?

The commitments will start when the EPA enters into force for CARIFORUM and for all EU states except the new members, (Eastern and Central European states) whose commitments will start in 2011, and Bulgaria and Romania in 2014.

What happens if these provisions are not honored?

The market access commitments on services in the EPA Title on Investment, Trade in Services and E-Commerce are covered by dispute settlement provisions. Therefore, Caribbean traders or investors or business persons will be able to challenge any restrictions to entering into a European jurisdiction which are inconsistent with the agreement or reneging on European commitments which they may confront.

Is CARIFORUM obligated to match the commitments of the EC?

The EPA and a Regional Free Trade Agreement (RFTA) is not based on unilateral preferences and therefore under WTO rules on RFTAs between developed and developing countries, reciprocity is required. Furthermore, the rules require that liberalization commitments covers substantially all services sectors between the Parties to the Agreement, and that they do not

explicitly exclude any mode of supply. However, the level of reciprocity in the exchange of concessions does not have to be the same, or symmetrical, for developed and developing countries in order to meet the requirements of multilateral rules. Therefore, as a developing region, CARIFORUM has not matched the commitments of the EC in all services sectors.

The main sectors that most CF states have liberalized in the EPA.

- Accounting, auditing and bookkeeping Services
- Architecture
- Engineering
- Computer and related Services
- Research and development
- Management consulting
- Services incidental to manufacturing
- Related scientific and technical consultant services
- Telecommunications
- Convention services
- Courier services
- Environmental services
- Hospital services
- Tourism and travel-related services
- Entertainment services
- Maritime transport

Are there any advantages to liberalizing CARIFORUM services?

CARIFORUM States' strategy in binding the opening of their services market is intended to attract increased investment in the region in order to boost the performance of established sectors and promote growth of new service industries. As well,

market entry can result in greater efficiencies in a range of services that are inputs to manufacturing and other services. It is expected that there will be increased trade in the short term in a wide range of business services, such as professional services, computer services, and scientific and technical testing and consulting services, if regional firms position themselves to take advantage of outsourcing opportunities from European firms. Significant gains are also expected in tourism, maritime transportation and cultural and entertainment services.