



# Cultural and Creative Industries

## Exporting to the EU

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## 1 Introduction

Market access for Services, which includes cultural and creative industries, for CARIFORUM parties varies in conditions depending on the areas of services. In most of the cases a must is recognition of accreditations of the professionals by the receiving EU particular country, but areas where entrepreneurship is the rule, professional accreditation is not the rule.

It is a must to understand that not all services are alike, and the ones presented in this guide are the ones that maybe needed by or in the entertainment business. The main difference in the services sector is related to the presence of the performing parties. When physical presence is required, a contract between parties from the CARIFORUM and the EU member will be a must. This contract can be a Business to business one or a Business to professional one, as long as the professional can comply with the conditions of hiring established by local law of the EU country.

On matters related to delivery of services related to artistic industries or artistic material in a final version, as film material, documentaries or movies or music as such, the matter will be treated as a commercial products, and as such it should be sold through the ordinary channels for those industries.

Participations on Festivals or fairs related to film and music industries will come with their own admissions rules and the final sales of music or films or documentaries it will be treated in accordance to its sector usual manner.

## 2 Contractual Services Suppliers

For Contractual Services Suppliers and Independent Professionals in the animation and film industries as well as in the rest of the services included in the GATS, the EU has reaffirmed their respective obligations arising from their commitments under the GATS in relation to the entry and temporary stay of contractual services suppliers and independent professionals.

For the professionals within the entertainment business the EU allows without prejudice the following services, into the territory of its Member States by contractual services suppliers of the CARIFORUM States through presence of natural persons, subject to the conditions specified below and in Annex IV, in the following sub-sectors that may be used by the entertainment industries :

1. Engineering services;
2. Computer and related services;
3. Research and development services;
4. Advertising services;
5. Fashion model services;
6. Translation and interpretation services;
7. Entertainment services other than audiovisual services.

The commitments undertaken by the EC Party and by the Signatory CARIFORUM States are subject to the following conditions:

(a) the natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract for a period not exceeding 12 months;

(b) the natural persons entering the other Party must be offering such services as an employee of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience [20] in the sector of activity which is the subject of the contract;

(c) with the exception of fashion model services, chef de cuisine services, and entertainment services other than audiovisual services, the natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level [21] and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the EC Party or of the Signatory CARIFORUM State applicable where the service is supplied;

(d) the natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during its stay in the other Party;

(e) the temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxemburg, 25 weeks, in any 12-month period or for the duration of the contract, whichever is less;

(f) access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided;

(g) the number of persons covered by the service contract shall not be larger than necessary to fulfill the contract, as it may be decided by the laws, regulations and requirements of the Party where the service is supplied;

(h) other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex IV.

### 3 Entertainment Services Access Conditions

#### **Contractual services suppliers and independent professionals**

Parties entering the EU may respect all obligations arising from their commitments under the GATS as regards the entry and temporary stay of contractual services suppliers and independent professionals.

1. Protection of intellectual property
2. Copyright and related rights
3. International agreements
  - (a) The World Intellectual Property Organization (WIPO) Copyright Treaty (Geneva, 1996); and
  - (b) The WIPO Performances and Phonograms Treaty (Geneva, 1996)
4. The Signatory CARIFORUM States shall endeavor to accede to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).
5. Cooperation on collective management of rights
6. Trade marks licenses
7. Exceptions to the rights conferred by a trade mark
8. Protection of Geographical indications in accordance to country laws
  - (a) any use of the protected names for goods in the same class of product as the geographical indication which do not originate in the geographical area indicated, even where:
    - (i) the true origin of the good is indicated;
    - (ii) the geographical indication in question is used in translation;

(iii) the name is accompanied by terms such as "kind", "type", "style", "imitation", "method" or other expressions of the sort.

## 4 Market Access

With respect to market access through commercial presence, the EC and every CARIFORUM States has accord to commercial presences and investors of the other Party a treatment no less favorable than that provided for in the specific commitments contained in Annex IV.

In sectors where market access commitments are undertaken, the measures which the EC Party and the Signatory CARIFORUM States shall not maintain or adopt either on the basis of a regional subdivision or on the basis of their entire territory, unless otherwise specified in Annex IV, are defined as:

- (a) limitations on the number of commercial presences whether in the form of numerical quotas, monopolies, exclusive rights or other commercial presence requirements such as economic needs tests;
- (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test [10];
- (d) 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; and
- (e) measures which restrict or require specific types of commercial presence (subsidiary, branch, representative office) [11] or joint ventures through which an investor of the other Party may perform an economic activity.

## 5 National treatment

1. In the sectors where market access commitments are inscribed in Annex IV and subject to any conditions and qualifications set out therein, with respect to all measures affecting commercial presence, the EC Party and the Signatory CARIFORUM States shall grant to commercial presences and investors of the other Party treatment no less favorable than that they accord to their own like commercial presences and investors.

2. The EC Party and the Signatory CARIFORUM States may meet the requirement of paragraph 1 by according to commercial presences and investors of the other Party, either formally identical treatment or formally different treatment to that they accord to their own like commercial presences and investors.

3. Formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of commercial presences and investors of the EC Party or of the Signatory CARIFORUM States compared to like commercial presences and investors of the other Party.

4. Specific commitments assumed under this Article shall not be construed to require the EC Party or the Signatory CARIFORUM States to compensate for inherent competitive disadvantages which result from the foreign character of the relevant commercial presences and investors.

#### Lists of commitments

The sectors liberalized by the EC Party and by the Signatory CARIFORUM States pursuant to this Chapter and, by means of reservations, the market access and national treatment limitations applicable to commercial presences and investors of the other Party in those sectors are set out in lists of commitments included in Annex IV.

## 6 Standards Concerning Intellectual Property Rights

### 6.1 Copyright and related rights

Copyright and related right are governed by:

#### A. International agreements

(a) The World Intellectual Property Organization (WIPO) Copyright Treaty (Geneva, 1996); and

(b) The WIPO Performances and Phonograms Treaty (Geneva, 1996).

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).

#### B. Cooperation on collective management of rights

In the Addendum we have include the Copyright law of the European Union.

## 6.2 Geographical Indications

### **Term of protection**

1. Protection afforded in respect of geographical indications in the EC Party and the Signatory CARIFORUM States shall be granted in accordance with the legal system and practice of the EC Party or the relevant Signatory CARIFORUM State as the case may be and shall be indefinite.

2. Such protection shall ensure that the use of geographical indications of goods protected be exclusively reserved in the EC Party and the Signatory CARIFORUM States to goods originating in the geographical area concerned and that are produced in accordance with the relevant product specifications.

3. In respect of the protection of geographical indications, the EC Party and the Signatory CARIFORUM States shall prohibit and prevent, ex officio or at the request of an interested party:

(a) regardless of the class of product on which it is used, the use in their territory of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place or origin in a manner which misleads the public as to the true geographical origin of the good; or any other use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention;

(b) any use of the protected names for goods in the same class of product as the geographical indication which do not originate in the geographical area indicated, even where:

(i) the true origin of the good is indicated;

(ii) the geographical indication in question is used in translation;

(iii) the name is accompanied by terms such as "kind", "type", "style", "imitation", "method" or other expressions of the sort.



It shall be possible to cancel the registration of a geographical indication. The procedure to this effect shall allow for the participation of any natural or legal person having a legitimate interest.

C. Generic terms, plant varieties, animal breeds

## ADDENDUM I

ANNEX IV to Creative Industries

## ADDENDUM II

Copyright law of the European Union.