Set up in 1960, the European Banking Federation (EBF) is the voice of the European banking sector (European Union & European Free Trade Association countries). The EBF represents the interests of almost 4,500 banks: large and small, wholesale and retail, local and cross-border financial institutions. Together these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the European Union.

EBF position on the inclusion of financial services in the Transatlantic Trade and Investment Partnership negotiations

General remarks

The EBF supports the upcoming EU trade and investment agreement negotiations with the United States (Transatlantic Trade and Investment Partnership - TTIP). The EBF believes that these negotiations constitute a unique opportunity for the conclusion of a comprehensive and ambitious agreement that would address a broad range of bilateral trade and investment issues. The TTIP will be larger than any previously concluded trade agreement, both as to the value of the trade areas covered and the range of sectors. In this respect, the EBF encourages the adoption of a mandate as broad, open and flexible as possible, and is against any a priori exclusion from the scope of the negotiations. As far as financial services are concerned, their inclusion in the mandate would further increase market access and enhance compatibility of financial regulations.

The European Union and the United States are the world’s largest financial markets with a high degree of interconnectedness. European and U.S. banks have a traditional and strong presence and activity in the United States and the European Union, respectively. Thus, the inclusion of financial services in the negotiations and their successful outcome would bear significant benefits for both sides, as it would enhance the efficiency of the transatlantic financial markets, facilitate trade, and deliver lower cost products to consumers and investors.

Furthermore, the importance of the EU and U.S. financial markets and their lead role in global regulatory coordination dictates greater regulatory convergence among them, as well as with other jurisdictions. Therefore, the view of the EBF is that – as regards financial services – the
upcoming negotiations should go beyond market access issues (non-discrimination, national treatment) and should also focus on regulatory coordination aspects, in order to promote international standard setting, equivalence and mutual recognition (substituted compliance) of home-jurisdiction rules.

**Market access**

Arguably, market access barriers in financial services are limited in number. This should not, however, prevent the EU and the United States from working within the TTIP negotiations towards strengthening the national treatment of financial institutions, removing remaining restrictions to trade in financial services and / or preventing new restrictions from arising at either the EU and federal U.S. level, or at the EU Member State level and at the U.S. state level, respectively. First and foremost, the EU and the United States should work together towards establishing free access via foreign direct investment of EU- and U.S.-domiciled financial institutions across the Atlantic and freedom of operation of such institutions’ offices in the respective host jurisdiction (commercial presence), as well as strong investment protection rules. In addition, significant liberalisation commitments with regard to cross-border trade in financial services should be sought. Current practical arrangements on the temporary movement of qualified persons is also an area where barriers exist and could be tackled mainly by improving the status of qualified persons in financial services, by reducing administrative burdens and by setting up mechanisms similar to the APEC Card for business visitors or by broadening the U.S. Visa Waiver Program.

**Regulatory consistency, recognition and cross-cutting measures**

Without disregarding the importance of market access issues for financial services, the full potential of TTIP can only be achieved through clear rules that would lead to better regulatory cooperation and, consequently, remove regulatory barriers. The EBF is aware of the importance and necessity of robust and effective financial regulation and prudential standards. It also understands that the EU and the U.S. regulators and supervisors have developed rules that best correspond to their respective jurisdiction, needs and values. This should not prevent, however, the EU and U.S. authorities (as well as authorities from other, similarly regulated jurisdictions) from working together and in good faith so as to promote consistent rules and high-quality regulatory standards. It should also not prevent them from seeking more regulatory consistency through convergence, harmonisation, equivalence, mutual recognition, or other agreed means, where appropriate, practicable and desirable. Such approach would be beneficial to the transatlantic financial markets and would greatly support their role as a growth factor for both sides of the Atlantic. The EBF wants to stress that regulatory consistency neither presupposes nor leads to deregulation of financial markets.

The existing Financial Market Regulatory Dialogue led by the European Commission (DG Internal Market) and the U.S. Treasury could be strengthened and supported by the inclusion of
financial services within the TTIP negotiations. Therefore, the EBF believes that the upcoming TTIP negotiations constitute a major opportunity for the establishment of a framework that would enhance regulatory consistency and promote appropriate recognition of the respective regimes. This framework should consist of a timeframe for the regulatory dialogues, a mechanism that would turn the agreements reached into binding commitments, and cross-cutting measures.

In fact, cross-cutting measures are needed for regulatory coherence and transparency, for the development and implementation of efficient, cost-effective, and more compatible regulations for financial services. These measures should be built upon mutually agreed objectives (e.g. transparency, avoidance of regulatory inconsistencies and overlaps, and extraterritorial effects) and may include:

- high-level political commitment to review existing regulatory cooperation efforts with the aim of accelerating the progress made;
- development of agreed upon lists of general prudentially acceptable regulatory practices and application of good regulatory practices;
- early consultations on significant regulations;
- use of impact assessments to minimise unintended consequences;
- periodic review of existing regulatory measures, followed by the development of a trigger, methodology, and review process;
- joint stakeholder involvement and consultation; and
- appropriate and consistent rulebooks for intra-corporate cross-border flows in financial firms.

With this framework in place, it would be possible for EU and U.S. (and possibly other) regulators to assess the compatibility and equivalence of their respective regulatory regimes and also to effectively monitor cross-border financial markets. Moreover, regulators would be able to discuss proposed rules and measures at the earliest practicable phase and notify each other of material changes within their respective regulatory systems. This would enhance the efficiency, and as a result, would decrease the opportunities for regulatory arbitrage, reduce the cost of duplicative regulation and the costs for financial products and services to consumers, investors, and issuers, and would provide legal clarity on prudential, market infrastructure and product issues for financial market participants.

At this point, it should be stressed that the work of the regulators can be neither undermined nor replaced by trade negotiators. The work to bring about regulatory coherence must be done by the regulators themselves, but providing a TTIP context for this regulator-to-regulator work is important too; it will serve to underscore the shared political goal of reducing – as much as practicable – unnecessary regulatory differences that affect both economies, and prevent new ones from arising. The regulators’ independence would not be brought into question through this process, nonetheless, their decisions would entail a greater understanding of differences between
their decisions and those of their transatlantic counterparts, the costs that those differences involve, and whether the costs outweigh the benefits.

**Institutional and legal framework for EU-U.S. dialogues**

The EBF does not share the view that regulatory cooperation in banking and securities will replace regulatory coordination in the G20, Financial Stability Board (FSB), and other international standard-setting bodies whose role is to find ways to make national financial regulatory systems more consistent. In fact, the EU and U.S. regulatory cooperation (e.g. Financial Market Regulatory Dialogue) could play a significant role for facilitating the setup of international standards and best practices related to financial markets regulation and oversight. It is of paramount importance that the two largest financial markets continue to have the lead in exploring the best approaches to global financial markets regulation. A framework for regulatory cooperation within existing forms of dialogue that takes place on both a transatlantic and global basis should be the most effective way forward, since it would add transparency to regulatory differences and commonalities, and help to avoid further fragmentation, taking into account that new financial markets rapidly emerge.

Still, the EBF believes that the EU-U.S. dialogues should operate within a regulatory framework outlined in TTIP and the legal mandates of the existing ones be reviewed. For instance, an EU-U.S. dialogue might well take the form of periodic stock-taking within the TTIP framework and at annual summits, as well as the establishment of a clear procedural link to a dialogue of financial legislators from both sides of the Atlantic, namely the Congress in the United States and the Council and the European Parliament in the EU. Moreover, agencies of financial regulation should have the explicit mandate to strive for EU-U.S. regulatory cooperation that could take the form of common standards, equivalence and / or mutual recognition. Such a specific mandate would encourage regulators to consider the impact on the transatlantic financial market at every step of the rulemaking process. In exceptional circumstances, in which, due to profound differences in constitutional, institutional or legal contexts, neither objective seems attainable, a comply-or-explain approach could also be envisaged.

**Definition of prudential carve-out**

The EBF understands the importance and necessity of prudential measures. The prudential ‘carve-out’ aims at protecting regulatory prerogatives related to financial stability and investor protection. However, such measures:

- must relate closely to financial stability, investor and / or client protection considerations; and
- should be confined to regulations which, due to insurmountable differences in constitutional or legal provisions on either or both the EU and the United States, cannot be bridged in the foreseeable future by either common standards, mutual recognition, substituted compliance, equivalence decisions or similar legal methods.
In addition, if the TTIP is to live up to the high expectations that have been created, the negotiations need to have as a benchmark the ‘best available concluded trade agreement by either party. For both parties, the best available (and most recent) free trade agreements appear to be the ones concluded with Korea. In this respect, in order for prudential measures to be adopted, consideration should be given to the principle of proportionality. The EBF strongly supports the inclusion of proportionality in the definition of the prudential carve-out. In particular, the prudential carve-out should not be more burdensome than necessary to achieve its aim, and, where it would not conform to the other TTIP provisions, it should not be used as a means of avoiding each party’s commitments and / or obligations. As a general rule, the TTIP should not unfairly impede access by third country financial firms to EU and US markets.