

① Processing of authorization applications



KEY INSIGHTS

- Clear procedural guarantees for authorization processes underpin transparency and predictability for service suppliers – representing a core area of GRP.
- GATS Article VI:3 provides the baseline of GRPs for authorization procedures: it requires processing of applications within a reasonable period of time, notification of decisions and, upon request, information on an application's status.
- The SDR Disciplines, like many modern PTAs, fill the gaps by providing a comprehensive set of GRPs that cover all of the steps for application: from publishing time frames for processing and providing an opportunity to correct minor application deficiencies, to giving written reasons for rejection, and ensuring timely entry into effect of authorizations.
- Many economies already have GRPs in place to improve the quality of procedures and strengthen authorities' accountability – these include acknowledging receipt of applications and establishing “silent consent” mechanisms. Over 70 per cent of economies covered in the WTO-World Bank STPD require licensing decisions to be made within an established time frame, and more than 76 per cent require competent authorities to explain reasons for rejection of applications.

Key features

A fundamental pillar of GRP is the processing of applications submitted by service suppliers to obtain authorization to offer their services. In this context, GRPs address the various guarantees provided at each step of the procedure: from defining time frames within which competent authorities decide on applications and establishing “silent consent” mechanisms for approvals, to providing applicants the possibility of enquiring about the status of their applications.

Furthermore, GRPs also ensure timely communication of decisions by competent authorities to applicants, as well as guaranteeing opportunities for submission of new applications in case of rejection. Additional GRP aspects relate to this area, such as the possibility to submit applications electronically, including through single entry point mechanisms, the determination of fees associated with the procedure, as well as the right to request the review of decisions taken by competent authorities. As the latter extend beyond the processing of applications *per se*, they will be addressed in subsequent subsections of this Handbook.

For service suppliers seeking authorization, the transparency and predictability of the application process are of paramount importance; business surveys consistently highlight the lack of accessible information regarding the application procedure as the most significant cost factor identified by service suppliers in their efforts to access domestic markets and conduct operations.¹ Uncertainty may discourage trade or re-direct it to other territories.² Moreover, service suppliers regularly call for government efforts to reduce multiple layers of bureaucracy and streamline administrative procedures, emphasizing that effective and efficient procedures in line with GRP principles are essential to enable a business-friendly environment.³

GATS, SDR Disciplines and other relevant trade agreements

The recognition that application procedures may hinder trade was already evident to the drafters of the GATS in the early 1990s. Under the heading “Domestic Regulation”, Article VI:3 of the GATS provides for three key obligations that apply whenever authorization is required for the supply of a service:⁴ (i) competent authorities must process

applications within a reasonable period of time after the submission of an application that is considered complete; (ii) applicants must be informed of the decision concerning the application;⁵ and (iii) at the request of applicants, competent authorities must provide without undue delay information regarding the status of the application.

In addition, Article VI:4 also contains a mandate to negotiate any necessary disciplines to ensure that key regulatory measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, do not constitute unnecessary barriers to trade in services.

Inspired by the extensive body of work undertaken at the WTO under the GATS Article VI:4 mandate on domestic regulation,⁶ the SDR Disciplines include an entire section on “Processing of Applications”.⁷ The GRP principles that are embedded in the obligations related to application procedures are comprehensive and aim to address the entire sequence of the application procedure; they aim to fill those gaps left by GATS Article VI:3 with a view to consolidating GRPs to be followed by competent authorities when dealing with authorization applications, from the setting of time frames for processing to the entry into effect of authorization.

Without prescribing a “one-size-fits-all” approach for implementation and using mainly “best endeavour language”, the SDR Disciplines cover the following procedural steps and guarantees (see Figure 1):⁸

- Establishing indicative time frames for processing an application;
- At the request of the applicant, providing information concerning the status of an application, without undue delay;
- Ascertaining, without undue delay, the completeness of an application;
- Ensuring the applicant is informed of the decision concerning the application within a reasonable period of time after its submission (in writing, to the extent possible);
- If an application is incomplete, and at the request of the applicant, identifying the additional information required to complete the application; and providing the applicant with the opportunity to provide the additional information that is needed;

- If an application is rejected, informing the applicant of the reasons thereof and, if applicable, the procedures for resubmission of the application;
- Ensuring that an applicant is not prevented from submitting another application solely on the basis of a previously rejected application;
- Allowing authorization, once granted, to enter into effect without undue delay.

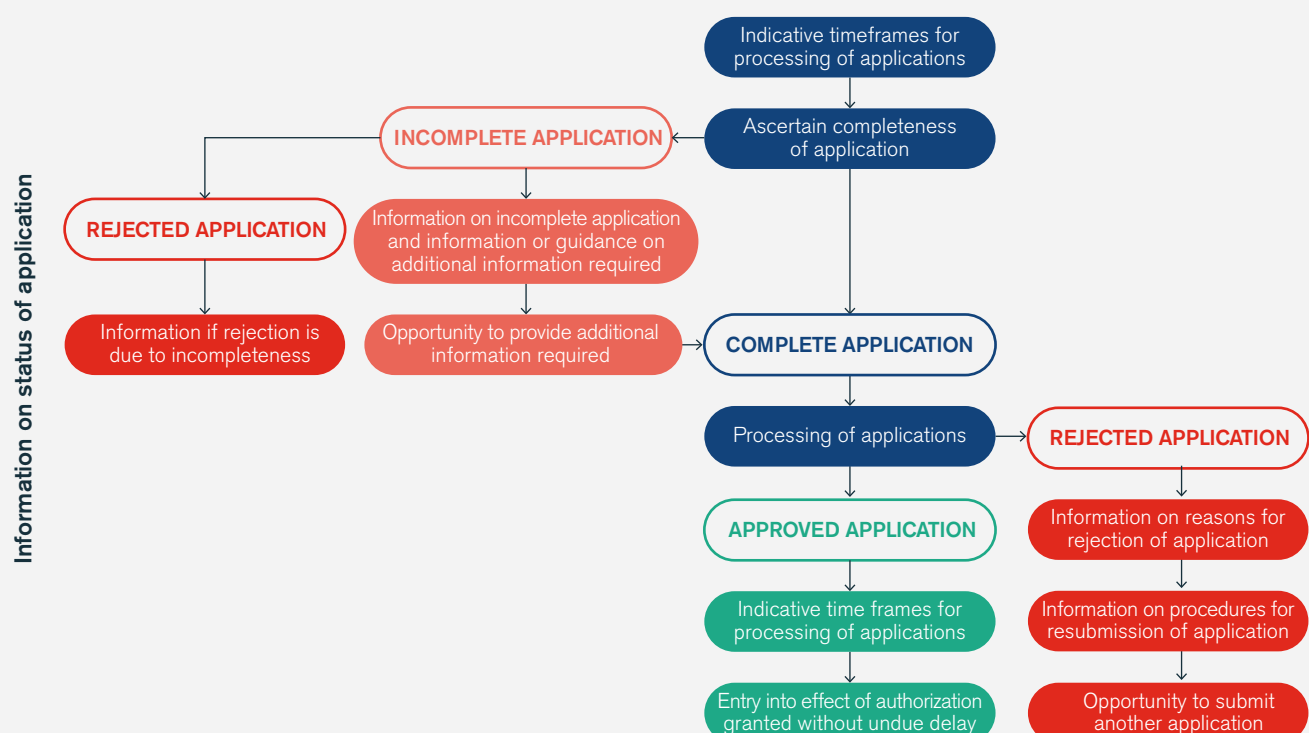
It is worth noting that some of the terms used in the SDR Disciplines have already been elaborated upon in various WTO disputes, since they also appear in other provisions of WTO agreements. With respect to the phrase “without undue delay”, WTO panels found that a “delay” is “(a period of) time lost by inaction or inability to proceed on the substance of the application”.⁹ The term “undue” refers to something “inappropriate, unsuitable, improper, unrightful”, or “going beyond what is warranted or natural”.¹⁰ In summary, whether applicants shall be informed of the status of their applications, or authorities shall establish the completeness of applications, or authorizations shall enter into effect “without undue delay”, these obligations

are to be carried out without unjustifiable, excessive, or disproportionate loss of time.

WTO panels also reflected on the types of circumstances that might or might not justify a delay; for example, it was noted that delays attributable to action or inaction of an applicant cannot be held against the authority carrying out the procedure.

In a similar vein, WTO panels considered that what constitutes “a reasonable period of time” must be established on a case-by-case basis, depending on the particular facts and circumstances of each case.¹¹ Panels noted that “reasonableness can be understood to mean as quickly as legally possible while accepting legitimate reasons for delay”.¹² In other words, a period of time would be considered “reasonable” if it is in accordance with generally accepted standards of rationality and sound judgement.¹³ In numerous disputes, the term “reasonable” has been interpreted as “in accordance with reason”, “not irrational or absurd”, “proportionate”, “sensible”, and “within the limits of reason, not greatly less or more than might be thought likely or appropriate”.¹⁴

Figure 1: GRPs on processing of applications in the SDR Disciplines



Thus, where authorities face delays in informing applicants of the incompleteness or rejection of their applications, these may generally be acceptable, as long as they are based on substantial reasons, such as the amount and complexity of documentation to be reviewed or the resources at the disposal of the authority in charge of the decision.

PTA practice

It is also important to mention that procedural guarantees similar to those set out in the SDR Disciplines can also be found in the text of PTAs, and especially in the most recent “new generation” agreements that have been most recently adopted.¹⁵ More generally, as it has become clear that market access and national treatment¹⁶ commitments alone may not be sufficient to ensure service suppliers can operate effectively in foreign services markets, trade agreements have increasingly been used not only to remove quantitative and discriminatory restrictions, but also to address regulatory obstacles and promote good governance in services markets.

PTAs have evolved considerably with regard to providing procedural guarantees to applicants. Early agreements typically only reproduced the text of GATS Article VI:3 and a commitment to review the results of WTO negotiations under GATS Article VI:4 with a view to bringing any agreed rules into effect between the parties to the agreements.¹⁷ More recently, many of the same economies have agreed to more comprehensive obligations on authorization procedures. For example, the 2015 ASEAN-India Trade in Services Agreement, commits the parties to ensure that applicants are (i) provided with an opportunity to remedy any deficiencies in the applications; and, in case of rejection are (ii) informed in writing of the reasons for such action, as well as (iii) granted a possibility of resubmitting a new application.¹⁸

It is also worth noting that two of the largest PTAs that have been concluded recently, namely the 2018 CPTPP and the 2022 RCEP, are ambitious when it comes to promoting GRPs to improve the quality of the business environment, including with regard to application procedures. They encompass all elements that are covered in the SDR Disciplines, except the Discipline on ensuring that authorizations enter into effect without undue delay.

It should also be highlighted that certain trade agreements go beyond the level of ambition of the SDR Disciplines, where flexibility has been employed to take account of the significant differences in WTO members’ regulatory approaches and capacities. However, some

agreements, such as the 2014 Switzerland-China FTA¹⁹ or the 2017 EU–Canada CETA,²⁰ go beyond this approach: they provide mandatory obligations for competent authorities responsible for processing applications.²¹ This may be attributed to the fact that agreements among a limited number of more developed economies which recognize and wish to leverage the benefits of aligning with GRPs make it possible to establish a higher standard of mandatory obligations.

Implementation at the domestic level

Indeed, it appears that an increasing number of economies have already implemented GRPs related to the processing of applications or are actively pursuing regulatory reforms with that objective. Data from the WTO-World Bank STPD shows that around 70 per cent of the economies studied, across different sectors, require licensing decisions to be made within an established time frame, and more than 76 per cent tasked competent authorities with explaining reasons for the rejection of authorization applications.

One interesting example is the EU Services Directive adopted in 2006. This Directive aimed to simplify and modernize administrative procedures and requirements for services suppliers.²² In 2001–2002, the European Commission conducted an extensive consultation with various European and national business associations and more than 6,000 companies. The results showed that, as EU member states continue to maintain different approaches to services regulation, the key barriers affecting services activities included administrative burdens and the complexity, length and uncertainty of procedures and requirements, which proved especially burdensome for small businesses.²³ To address these issues and build on various community or national level initiatives, the Services Directive was introduced with the primary goal of establishing a framework for the removal of unjustified regulatory and administrative barriers and, thereby, fostering the freedom of establishment and the free movement of services in the internal market.

Articles 9 to 13 of the EU Services Directive establish a set of GRPs for “authorization schemes”. These are defined as “any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision concerning access to a services activity or the exercise thereof” (Article 4). The Directive is designed to be applied horizontally across a wide range of services sectors, encompassing business-related services and most of the regulated professional services, distribution, education and tourism services.

It is worth noting that the principles contained in the SDR Disciplines are in line with those included in the EU Services Directive, although the latter formulates them as mandatory obligations, not foreseeing the typical flexibilities for implementation contained in the SDR Disciplines (e.g. “to the extent practicable”, “in a manner consistent with the legal system”). Furthermore, while the SDR Disciplines only require the setting of “indicative time frames” for the processing of applications, Article 13 of the EU Services Directive requires that applications are acknowledged and processed “as quickly as possible” and that the time period for decisions that is fixed and made public may only be extended once, for a limited duration, with a motivated notification by competent authorities.

The EU Services Directive also provides for a silent authorization mechanism, which means that member states must ensure that, if an application has not received any response within the established time frame, the authorization is deemed to have been granted to the applicant concerned. Finally, the Directive establishes that member states ensure that all authorization procedures “may be easily completed, at a distance and by electronic means, through the relevant point of single contact and with the relevant competent authorities”.²⁴

Following the adoption of the Services Directive, all EU member states were required to review their national regulatory systems with a view to aligning them with the Directive.²⁵ Several EU member states introduced ambitious reform projects.²⁶ The European Commission monitored the Directive’s implementation with a view to identifying further improvements to the EU single market. An analysis was conducted to assess the impact of measures introduced by EU member states between 2006 and 2017.²⁷ While progress on the removal of regulatory barriers was found to be slow, the analysis showed that, in line with one of its key objectives, many electronic procedures systems had been introduced across services sectors.²⁸

Looking at the broader implementation of the GRPs contained in the EU Services Directive, analysis showed that the removal of barriers in services between 2006 and 2017 would result in discounted cumulative gains of 2.1 per cent of GDP by 2027.²⁹ Additional reforms that are needed to achieve the overall goals of the Directive are expected to generate an additional growth potential of up to 2.5 per cent of GDP by 2027, resulting in significant total gains in GDP of up to 4.65 per cent by the same year.³⁰

Another insightful example is the case of Morocco, which enacted a new law in 2020, aimed at simplifying administrative procedures and formalities (Loi n° 55-19).³¹ As part of a broader administrative reform programme,

the law sets out the general aspects of administrative procedures and formalities, including those relating to the authorizations required by service suppliers to provide their services in the Moroccan market.

Importantly, the law provides for a set of guiding principles to improve the relationship between the authorities and the users of administrative systems. Among these principles it is worth noting, (i) the transparency and the facilitation of access to information, notably through electronic means; (ii) the simplification and the suppression of unjustified procedures and requirements, including the establishment of maximum time frames and the reduction of fees required for administrative decisions; (iii) the obligation of administrative authorities to require from applicants exclusively those documents foreseen by relevant laws or regulations; and (iv) the progressive digitization of all procedures and formalities within five years from the entry into force of the law.

The Moroccan law goes beyond what is demanded by the SDR Disciplines in several aspects. For example, with respect to the processing of applications, the law instructs administrative authorities to provide applicants with a receipt as soon as applications are received. With this receipt, the authorities are required to specify any additional documents that the applicant must present within a maximum period of 30 days under penalty of rejection of the application. The receipt also activates the time frame for decisions by the authorities, of a maximum of 60 days, with the possibility of a single extension if the application requires specific technical expertise.

Additionally, for certain administrative actions determined by regulation, the law considers administrative silence as an acceptance of the application. This means that, upon the user’s request, the administration must approve the action within seven days from the date of submission. Interestingly, the law also introduces the principle of information exchange among different government bodies to gradually eliminate the need for users to provide the same documents to multiple authorities. Moreover, the law provides for the establishment of a national online portal (www.idarati.ma) for all administrative procedures and formalities: launched in 2021, the portal serves as a single access point for users to access all information necessary to obtain administrative approvals.

The Moroccan law sets out an ambitious pathway for the implementation of GRPs. It tasks a national commission with the following responsibilities: (i) developing the national strategy for the simplification of administrative procedures and formalities and ensuring its implementation and

evaluation; (ii) monitoring the progress of the digitalization of procedures and administrative formalities; and (iii) supervising the undertaking of research and studies to measure users' satisfaction with the new law.

Further to its establishment, the commission analysed 3,491 administrative acts to verify their compliance with the obligations and requirements included in the new law and to discontinue those that were unnecessary. The commission is also in charge of communicating with the authorities concerned. This involves organizing thematic workshops and seminars to assist them in making the necessary adjustments to their procedures. To date, more than 2,537 administrative procedures and formalities relevant to service providers, in strict accordance with the law's GRP principles, have been made available on Morocco's national portal. Figure 2 provides a snapshot comparison of the SDR Disciplines on processing of applications with the EU Services Directive and Morocco's Law.

When it comes to application procedures in individual services sectors, it is interesting to consider, for example, Canada's framework for the granting of approvals in the financial sector.³² In Canada, regulatory approvals of investments in financial institutions are administered by the Office of the Superintendent of Financial Institutions (OSFI) – an independent federal government agency in charge of preserving the soundness of the financial system. One key element of the OSFI system is continuous communication with applicants: from an acknowledgement of receipt of applications, to regular updates and discussions on progress and timely exchanges in case of clarifications needed, as well as prompt notice of final decisions of approval or denial.

The Canadian approach is somehow different from the examples of national practices discussed above; given the prudential and complex nature of the information to be reviewed, the regulations for each specific financial services subsector (e.g. banking, insurance, etc.) do not explicitly establish the timelines envisaged for the processing of applications. Rather, it is the ongoing communication that provides the applicants with the transparency and predictability they need as they move throughout all stages of the process. With over 140 new federally regulated financial institution transactions and business undertakings approved between 2021 and 2022, it appears that the continuous interaction facilitates the resolution of any issues as the review progresses, which results in very few applications being formally rejected.³³

In conclusion, when it comes to authorizations, procedural steps and guarantees are an essential element of GRPs. On the one hand, they provide service suppliers with the transparency and predictability necessary to obtain authorizations required for their business activities. On the other hand, they represent benchmarks against which competent authorities can be held accountable for their decisions. While in terms of implementation domestic practices vary, and the principles enshrined in the SDR Disciplines, as well as in modern PTAs, represent a widespread reference point for national regulatory systems – especially when it comes to cross-cutting administrative laws and regulations. Beyond the SDR Disciplines, the experience across a large sample of economies shows that governments have put in place regulatory practices which closely resonate with the objective of simplifying and facilitating procedures, notably with respect to the acknowledgment of submission of applications and silent approval mechanisms.

Figure 2: Comparison of GRPs on processing of applications between the SDR Disciplines, the EU Services Directive and Morocco's Law on the Simplification of Administrative Procedures and Formalities

SDR Disciplines	EU Services Directive	Morocco's Law on the simplification of administrative procedures and formalities
- Indicative time frames for processing application - Information on status of application - Ascertaining without undue delay completeness of application - Information on decision on application within reasonable period of time - Incomplete application: information on additional information required - Rejected application: information on reasons for rejection - Ensuring that applicant is not prevented from submitting another application solely on the basis of previously rejected application - Entry into effect of authorization without undue delay	- Guarantee that applications will be dealt with as quickly as possible and, in any event, within a reasonable period - Applications acknowledged as quickly as possible with relevant information - Period for processing of application is fixed and may be extended once for a limited time, when motivated by the complexity of the issue (with notification to applicant) - Silent approval mechanism - Incomplete application: information on additional information required - Rejected application: information on reasons for rejection	- Receipt provided upon submission of application, with identification of any additional documents that applicant must present within 30 days under penalty of rejection of application - Time frame for decision on application fixed at 60 days, with possibility of single extension if application requires specific technical expertise - Silent approval mechanism

ENDNOTES

- 1 See, for example, PECC (2016), pp. 51-52.
- 2 van der Marel and Shepherd (2020), p. 4.
- 3 IDB, ITC and DIE (2022), p. 11.
- 4 Note that the obligations contained in GATS Article VI:3 only apply to services sectors for which commitments have been undertaken by the WTO member in their schedule of specific commitments.
- 5 Article VI:3 of the GATS does not refer explicitly to the processing of applications. However, the paragraph requires the competent authority to “inform the applicant of the decision concerning the application”. This obligation presupposes that a decision has been taken, which in turn requires that the application has been assessed or processed.
- 6 For further information on the Working Party on Domestic Regulation, please refer to https://www.wto.org/english/tratop_e/serv_e/dom_reg_negs_e.htm.
- 7 SDR Disciplines (WTO, 2021a), paras. 7 and 8.
- 8 SDR Disciplines (WTO, 2021a), paras. 7 and 8.
- 9 WTO (2017a), paras. 5.81 to 5.84; WTO (2017b), para. 7.530.
- 10 WTO (2017a), paras. 5.81 to 5.84; WTO (2017b), para. 7.530.
- 11 DSU, Article 21.3. See also, WTO (1999), para. 93.
- 12 WTO (2017b), fn 1008.
- 13 WTO (2005), para. 7.385.
- 14 WTO (2012), para. 7.850.
- 15 The term “new generation agreements” is frequently used for agreements that do not only cover trade in goods, but also services, investment and potentially other aspects such as procurement and intellectual property rights. Such agreements often contain deeper provisions on regulatory issues and GRPs.
- 16 National treatment refers to the principle of giving others the same treatment as one’s own nationals.
- 17 See, for example, India–Singapore CECA (2005); Pakistan–Malaysia CEPA (2008); Iceland–China FTA (2014).
- 18 ASEAN-India Trade in Services Agreement (2015), Agreement on Trade in Services, Article 5: Domestic Regulation.
- 19 China-Switzerland FTA (2014), Annex VI, Article 2.
- 20 EU–Canada CETA (2017), Chapter 12: Domestic Regulation.
- 21 For more information on the use of soft and mandatory language in bilateral and regional trade agreements, please see Baiker, Bertola and Jelitto (2021), pp. 24-26.
- 22 EU, Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (EU Services Directive), OJ L 376, 27 December 2006, pp. 36–68.
- 23 European Commission (2002).
- 24 European Commission, “Implementation of the Services Directive”, https://single-market-economy.ec.europa.eu/single-market/services/directive/implementation_en.
- 25 European Commission, “Implementation of the Services Directive”, https://single-market-economy.ec.europa.eu/single-market/services/directive/implementation_en.
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- 27 European Commission, “Implementation of the Services Directive”, https://single-market-economy.ec.europa.eu/single-market/services/directive/implementation_en.
- 28 European Commission (2021).
- 29 European Commission, “Implementation of the Services Directive”, https://single-market-economy.ec.europa.eu/single-market/services/directive/implementation_en.
- 30 European Commission, “Implementation of the Services Directive”, https://single-market-economy.ec.europa.eu/single-market/services/directive/implementation_en.
- 31 Government of Morocco, Ministry of Digital Transition and Administrative Reform, “Simplification et digitalisation des parcours usagers”, <https://www.mmisp.gov.ma/fr/nos-metiers/simplification-et-digitalisation-des-parcours-usagers>.
- 32 Government of Canada, Office of the Superintendent of Financial Institutions (OSFI), “Transaction Instructions”, <https://www.osfi-bsif.gc.ca/en/data-forms/applications-approvals/transaction-instructions>.
- 33 OSFI (2022); WTO (2021b).



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