

**Subject:** Draft text of the Agreement on the New Partnership with the United Kingdom

**Origin:** European Commission, Task Force for Relations with the United Kingdom

**Remarks:** This negotiating document was transmitted to the United Kingdom on 18 March 2020, following consultation with the European Parliament and Council. It was presented to the Council Working Party on the United Kingdom on Friday 13 March 2020.

**Published on the UKTF website on Wednesday 18 March 2020**

---

**Table of contents**

PART ONE: COMMON PROVISIONS..... 7

    Title I: General Provisions..... 7

    Title II: Basis for Cooperation ..... 7

    Title III: Principles of Interpretation and Definitions..... 10

PART TWO: ECONOMY AND TRADE ..... 12

    Title I: Transparency ..... 12

    Title II: Good regulatory practices and regulatory cooperation..... 13

    Title III: Level Playing Field and Sustainability ..... 18

        Chapter one: General principles..... 18

        Chapter two: Specific areas of level playing field and sustainability ..... 20

            Section 1: State aid control ..... 20

            Section 2: Competition ..... 25

            Section 3: State-owned enterprises ..... 27

            Section 4: Taxation ..... 32

            Section 5: Labour and social protection ..... 33

            Section 6: Environment and health ..... 34

            Section 7: Fight against climate change ..... 35

            Section 8: Other instruments for trade and sustainable development ..... 37

    Title IV: Trade in goods..... 46

        Chapter one: National Treatment and market access for goods [including trade remedies] ..... 46

        Chapter two: Rules of origin..... 53

            Section 1: Rules of Origin ..... 53

            Section 2: Origin Procedures ..... 59

            Section 3: Other Provisions ..... 65

        Chapter three: Sanitary and Phytosanitary Issues ..... 66

        Chapter four: Technical barriers to trade..... 75

        Chapter five: Customs and trade facilitation ..... 82

    Title V: Fisheries ..... 93

        Chapter one: Initial provisions ..... 93

        Chapter two: Conservation and Sustainable exploitation of fisheries resources ..... 95

        Chapter three: Arrangements on access to waters and resources ..... 97

    Title VI: Services and investment ..... 99

        Chapter one: General Provisions..... 99

        Chapter two: Investment liberalisation..... 103

        Chapter three: Cross-Border Trade in Services ..... 108

        Chapter four: Entry and Temporary Stay of Natural Persons for Business Purposes ..... 109

        Chapter five: Regulatory Framework ..... 114

Section 1: Domestic Regulation.....	114
Section 2: Provisions of General Application .....	118
Section 3: Delivery Services.....	119
Section 4: Telecommunications Services .....	121
Section 5: Financial Services.....	127
Section 6: International Maritime Transport Services .....	131
Title VII: Digital trade.....	133
Chapter one: General Provisions.....	133
Chapter two: Data flows and personal data protection.....	135
Chapter three: Specific provisions.....	135
Title VIII: Capital movements, payments, transfers and temporary safeguard measures.....	138
Title IX: Intellectual property.....	140
Chapter one: General Provisions.....	140
Chapter two: Standards concerning intellectual property rights.....	143
Section 1: Copyright and Related Rights .....	143
Section 2: Trade marks .....	147
Section 3: Design .....	149
Section 4: Geographical Indications.....	151
Section 5: Patents.....	154
Section 6: Protection of Undisclosed Information .....	155
Section 7: Plant Varieties.....	158
Chapter three: Enforcement of intellectual property rights .....	158
Section 1: Civil and Administrative Enforcement.....	158
Section 2: Border Enforcement .....	162
Chapter four: Other Provisions .....	163
Title X: Public procurement.....	164
Chapter one: Scope .....	164
Chapter two: Additional rules for covered procurement.....	165
Chapter three: National treatment beyond covered procurement.....	168
Chapter four: Other provisions .....	169
Title XI: Mobility of natural persons.....	171
Title XII: Transport .....	172
Chapter one: Air transport .....	172
Chapter two: Aviation safety.....	188
Chapter three: Transport of goods by road .....	192
Chapter four: Rail transport .....	195
Title XIII: Energy and raw materials.....	195
Section 1: General Provisions.....	195

Section 2: Sustainable Energy .....	200
Section 3: Electricity and Gas .....	202
Section 4: Other Provisions .....	207
Title XIV: Civil Nuclear .....	208
Title XV: Small and medium-sized enterprises .....	218
Title XVI: Exceptions .....	222
Title XVII: Other provisions .....	224
PART THREE: SECURITY PARTNERSHIP .....	228
Title I: Law enforcement and judicial cooperation in criminal matters .....	228
Chapter one: General Provisions .....	228
Chapter two: Exchanges of DNA, Fingerprints and vehicle registration data (“PRUM”) .....	229
Chapter three: Transfer and processing of passenger name record data (PNR) .....	235
Chapter four: Cooperation on operational information .....	243
Chapter five: Cooperation with Europol .....	246
Chapter six: Cooperation with Eurojust .....	251
Chapter seven: Surrender .....	255
Chapter eight: Mutual assistance .....	271
Chapter nine: Exchange of information extracted from criminal records .....	274
Chapter ten: Anti-money laundering and counter-terrorism financing .....	275
Chapter eleven: Other provisions .....	282
Title II: Foreign Policy, Security and Defence .....	285
Title III: Thematic Cooperation .....	285
Chapter one: Fight against irregular migration .....	285
Chapter two: Health security .....	285
Chapter three: Cyber-security .....	286
PART FOUR: PARTICIPATION IN UNION PROGRAMMES, SOUND FINANCIAL MANAGEMENT AND FINANCIAL PROVISIONS .....	289
Chapter One: Participation of the United Kingdom in Union programmes .....	289
Section 1: General Conditions for participation in Union programmes .....	289
Section 2: Rules for financing the participation in programmes .....	292
Section 3: Suspension and termination of the participation in programmes .....	294
Chapter two: Sound financial management .....	296
Section 1: Protection of financial interests and recovery .....	296
Section 2: Other rules for the implementation of the programmes .....	298
PART FIVE: INSTITUTIONAL AND HORIZONTAL PROVISIONS .....	299
Title I: Institutional framework .....	299
Title II: Dispute settlement .....	302
Chapter one: General provisions .....	302
Chapter two: Procedure .....	303

Chapter three: Compliance .....	306
Section 1 .....	306
Section 2 .....	308
Chapter four: Common procedural provisions.....	311
Title III: Fulfilment of obligations and safeguard measures .....	312
PART SIX: FINAL PROVISIONS .....	314
ANNEX LPFS-X – LIST OF STATE AID ACTS AND PROVISIONS .....	317
ANNEX GOODS-1: JOINT DECLARATION CONCERNING CUSTOMS UNIONS .....	318
ANNEX ORIG-1: INTRODUCTORY NOTES TO PRODUCT SPECIFIC RULES OF ORIGIN.....	319
ANNEX ORIG-2: PRODUCT SPECIFIC RULES OF ORIGIN .....	320
ANNEX ORIG-3: TEXT OF THE STATEMENT OF ORIGIN.....	321
ANNEX ORIG-4: JOINT DECLARATION CONCERNING THE PRINCIPALITY OF ANDORRA .....	322
ANNEX ORIG-5: JOINT DECLARATION CONCERNING THE REPUBLIC OF SAN MARINO.....	323
ANNEX TBT-1: INTERNATIONAL STANDARDISING BODIES REFERRED TO IN ARTICLE 4(4).....	324
ANNEX FISH-1: LIST OF SHARED STOCKS.....	325
ANNEX FISH-2: ALLOCATION OF FISHING OPPORTUNITIES .....	331
ANNEX FISH-3a: ACCESS BY UNION VESSELS TO UNITED KINGDOM WATERS.....	335
ANNEX FISH-3b: ACCESS BY UNITED KINGDOM VESSELS TO UNION WATERS .....	338
ANNEX SERVIN-1: RESERVATIONS FOR EXISTING MEASURES.....	340
ANNEX SERVIN-2: RESERVATIONS FOR FUTURE MEASURES.....	341
ANNEX SERVIN-3: RESERVATIONS FOR INTRA-CORPORATE TRANSFEREES, BUSINESS VISITORS FOR ESTABLISHMENT PURPOSES AND SHORT TERM BUSINESS VISITORS .....	342
ANNEX SERVIN-3BIS: LIST OF ACTIVITIES FOR SHORT-TERM BUSINESS VISITORS .....	343
ANNEX SERVIN-4: CONTRACTUAL SERVICE SUPPLIERS AND INDEPENDENT PROFESSIONALS .....	344
ANNEX SERVIN-5: MOVEMENT OF NATURAL PERSONS.....	345
ANNEX SERVIN-6: GUIDELINES FOR ARRANGEMENTS ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS .....	347
NOTE DIGIT-1: COMPUTER SERVICES.....	348
ANNEX IP-A: GEOGRAPHICAL INDICATIONS: DOMESTIC LEGISLATION.....	349
SECTION A: Legislation of the Parties.....	349
SECTION B: Elements for registration and control of geographical indications as referred to in paragraphs 1 and 2 of Article IP.32 [Domestic legislation] .....	349
ANNEX IP-B: GEOGRAPHICAL INDICATIONS: OPPOSITION PROCEDURE.....	351
ANNEX IP-C: GEOGRAPHICAL INDICATIONS: LISTS.....	352
SECTION A: Geographical indications for products of the European Union to be protected in the United Kingdom .....	352
SECTION B: Geographical indications for products of the United Kingdom to be protected in the European Union .....	352
ANNEX PPROC-1: PUBLIC PROCUREMENT .....	353
SECTION A: Relevant provisions of the WTO Government Procurement Agreement.....	353

SECTION B: Market access commitments .....	353
ANNEX MOBI-1 - JOINT DECLARATIONS RELEVANT TO ARTICLE MOBI.4 .....	354
ANNEX AFSAF-1: AIRWORTHINESS AND ENVIRONMENT CERTIFICATION .....	355
SECTION A: General provisions .....	355
SECTION B: Certification Oversight Board .....	356
SECTION C: Implementation .....	357
SECTION D: Design certification .....	358
SECTION E: Production certification .....	362
SECTION F: Export certificates .....	364
SECTION G: Qualification of competent authorities .....	365
SECTION H: Communications, consultations and support .....	366
ANNEX ROAD-1: TRANSPORT OF GOODS BY ROAD .....	368
ANNEX ENER-1 .....	372
ANNEX ENER-2: NON APPLICATION OF THIRD PARTY ACCESS AND OWNERSHIP UNBUNDLING TO NEW INFRASTRUCTURE .....	373
ANNEX CIVNU-1: REPROCESSING .....	374
ANNEX UNPRO-1: IMPLEMENTATION OF THE FINANCIAL CONDITIONS .....	376
ANNEX INST-1: ROP PARTNERSHIP COUNCIL .....	377
ANNEX INST-2: ROP SPECIALISED COMMITTEES .....	378
ANNEX INST-3: ROP ARBITRATION .....	379
ANNEX INST-4: ROP DISPUTE SETTLEMENT TRIBUNAL .....	380
ANNEX INST-5: CODE OF CONDUCT .....	381
Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties .....	382
TITLE I: GENERAL PROVISIONS .....	382
TITLE II: ADMINISTRATIVE COOPERATION AND COMBATING FRAUD .....	386
TITLE III: RECOVERY ASSISTANCE .....	391
TITLE IV: IMPLEMENTATION AND APPLICATION .....	399
TITLE V: FINAL PROVISIONS .....	400
Protocol on mutual administrative assistance in customs matters .....	402
Protocol on Social Security Coordination .....	408
Protocol on participation to the Union programmes .....	435
Protocol on security procedures for exchanging and protecting classified information .....	436

## PART ONE: COMMON PROVISIONS

### *TITLE I: GENERAL PROVISIONS*

#### Article COMPROV.1: Purpose

1. This Agreement establishes a comprehensive partnership between the Parties.
2. The aim of this partnership is to maintain, between the Union and the United Kingdom, an area of prosperity and good neighbourliness, founded on common values and characterised by close and peaceful relations based on cooperation.

#### Article COMPROV.2: Supplementing agreements

1. Where the Union and the United Kingdom conclude other bilateral agreements between them, such agreements shall constitute supplementing agreements to this Agreement. Such supplementing agreements shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of the overall framework.
2. Paragraph 1 shall also apply to:
  - (a) agreements between the Union and its Member States, of the one part, and the United Kingdom, of the other part;
  - (b) agreements between Euratom, of the one part, and the United Kingdom, of the other part.

#### Article COMPROV.3: Good faith

1. The Parties shall, in full mutual respect and good faith, assist each other in carrying out tasks that flow from this Agreement and any supplementing agreement.
2. They shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from this Agreement and any supplementing agreement and shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement and any supplementing agreement.

### *TITLE II: BASIS FOR COOPERATION*

#### Article COMPROV.4: Democracy, rule of law and human rights

1. The Parties shall continue to uphold the shared values and principles of democracy, the rule of law, respect for human rights, which underpin their domestic and international policies. In this regard, the Parties reaffirm their respect for the Universal Declaration of Human Rights and the international human rights treaties to which they are parties, as well as their continued commitment to respect the European Convention on Human Rights and Protocols 1, 6 and 13 thereto.
2. The Parties shall promote such shared values and principles in international fora. The Parties shall cooperate and coordinate in promoting those values and principles, including with or in third countries.

#### Article COMPROV.5: Fight against climate change

1. The Parties consider that climate change represents an existential threat to humanity and reiterate their commitment to strengthening the global response to this threat. The fight against

man-made climate change as elaborated in the United Nations Framework Convention on Climate Change (“UNFCCC”) process, and in particular in the Paris Agreement, inspires the domestic and external policies of the Union and the United Kingdom. Accordingly, each Party shall respect the Paris Agreement and the process set by UNFCCC, and refrain from any acts or omissions that would undermine its adherence to or materially defeat the object and purpose of the Paris Agreement.

2. The Parties shall advocate the fight against climate change in international fora, including by engaging with other countries and regions to increase their level of ambition in the reduction of greenhouse emissions.

#### Article COMPROV.6: Countering proliferation of weapons of mass destruction

1. The Parties consider that the proliferation of weapons of mass destruction (“WMD”) and their means of delivery, both to State and non-State actors, represents one of the most serious threats to international stability and security. The Parties therefore agree to co-operate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery through full compliance with and national implementation of existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations.

2. The Parties furthermore agree to cooperate and to contribute to countering the proliferation of weapons of mass destruction and their means of delivery by:

- (a) taking steps to sign, ratify, or accede to, as appropriate, and fully implement all other relevant international instruments;
- (b) establishing an effective system of national export controls, controlling the export as well as transit of WMD-related goods, including a WMD end-use control on dual use technologies and containing effective sanctions for breaches of export controls.

The Parties agree to establish a regular political dialogue on these matters.

#### Article COMPROV.7: Small arms and light weapons and other conventional weapons

1. The Parties recognise that the illicit manufacture, transfer and circulation of small arms and light weapons, including their ammunition, and their excessive accumulation, poor management, inadequately secured stockpiles and uncontrolled spread continue to pose a serious threat to peace and international security.

2. The Parties agree to observe and fully implement obligations to deal with the illicit trade in small arms and light weapons (“SALW”), including their ammunition, under existing international agreements and UN Security Council resolutions, as well as commitments within the framework of other international instruments applicable in this area, such as the UN Programme of Action to prevent, combat and eradicate the illicit trade in SALW in all its aspects.

3. The Parties recognise the importance of domestic control systems for the transfer of conventional arms in line with existing international standards. The Parties recognise the importance of applying such controls in a responsible manner, as a contribution to international and regional peace, security and stability, and to the reduction of human suffering, as well as to the prevention of diversion of conventional weapons.

4. The Parties undertake in this regard to fully implement the Arms Trade Treaty and to cooperate with each other within the framework of the Treaty, including in promoting the universalisation and full implementation of the Treaty by all UN Member States.



5. The Parties therefore undertake to cooperate and to ensure coordination, complementarity and synergy in their efforts to regulate or improve the regulation of international trade in conventional arms and to prevent, combat and eradicate the illicit trade in arms.
6. The Parties agree to establish a regular dialogue on these matters.

Article COMPROV.8: The most serious crimes of concern to the international community

1. The Parties reaffirm that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, including with the International Criminal Court. The Parties agree to fully support the universality and integrity of the Rome Statute of the International Criminal Court and related instruments.
2. The Parties agree to establish a regular dialogue on these matters.

Article COMPROV.9: Counter-terrorism

1. The Parties shall cooperate at bilateral, regional and international levels to prevent and combat acts of terrorism in all its forms and manifestations in accordance with international law, including international counterterrorism-related agreements, international humanitarian law and international human rights law, as well as with the principles of the Charter of the United Nations.
2. The Parties shall enhance cooperation on counter-terrorism, including preventing and countering violent extremism and the financing of terrorism, with the aim to advance their common security interests, taking into account the United Nations Global Counter-Terrorism Strategy and relevant United Nations Security Council resolutions, without prejudice to law enforcement and judicial cooperation in criminal matters and intelligence exchanges.
3. The Parties agree to establish a regular dialogue on these matters. This dialogue will, *inter alia*, aim to promote and facilitate:
  - (a) sharing of assessments on the terrorist threat;
  - (b) exchange of best practices and expertise on counter terrorism;
  - (c) operational cooperation and exchange of information; and
  - (d) exchanges on cooperation in the framework of multilateral organisations.

Article COMPROV.10: Personal data protection

1. The Parties affirm their commitment to ensuring a high level of personal data protection and shall endeavour to work together to promote high international standards.
2. The Parties recognise the importance of promoting and protecting the fundamental rights to privacy and data protection, including security of personal data, as a central factor of consumer trust in the digital economy, a key enabler for further developing commercial exchanges and a necessary condition for law enforcement cooperation. To this end, the Parties shall undertake to respect, in the framework of their respective laws and regulations, the commitments they have made in this Agreement in connection with these rights.

3. The Parties shall cooperate, while respecting their respective laws and regulations, at bilateral and multilateral levels. This may include dialogue, exchange of expertise and cooperation on enforcement, as appropriate, with respect to personal data protection.

Article COMPROV.11: Global cooperation on issues of shared economic, environment and social interest

1. The Parties recognise the importance of global cooperation to address issues of shared economic, environment and social interest and, where in their mutual interest, they shall promote multilateral solutions to common problems.

2. While preserving their decision-making autonomy, and without prejudice to other provisions of this Agreement, the Parties shall cooperate on current and emerging global issues of common interest, such as peace and security, climate change, sustainable development, cross-border pollution, environmental protection, digitalisation, public health and consumer protection, taxation, financial stability and free and fair trade and investment. To that end, they shall maintain a constant and effective dialogue and, as much as possible, coordinate their positions in multilateral organisations and fora in which the Parties participate, such as the United Nations, the Group of Seven (G-7) and the Group of Twenty (G-20), the Organisation for Economic Co-operation and Development, the International Monetary Fund, the World Bank and the World Trade Organization.

Article COMPROV.12: Essential elements

The provisions contained in Article 4(1) [Democracy, rule of law and human rights], Article 5(1) [Fight against climate change] and Article 6(1) [Countering proliferation of weapons of mass destruction] constitute essential elements of the partnership established by this Agreement.

*TITLE III: PRINCIPLES OF INTERPRETATION AND DEFINITIONS*

Article COMPROV.13: Public international law

The provisions of this Agreement and of any supplementing agreements shall be interpreted in accordance with customary rules of interpretation of public international law, including those codified in the 1969 Vienna Convention on the Law of Treaties.

Article COMPROV.14: Union law

Concepts of Union law contained in this Agreement or in any supplementing agreement, or provisions of Union law referred to in this Agreement or in any supplementing agreement, shall in their application and implementation be interpreted in accordance with the methods and general principles of Union law and in conformity with the case-law of the Court of Justice of the European Union.

Article COMPROV.15: WTO case-law

The interpretation and application of the provisions of Part Two [Economy and trade] of this Agreement shall take into account relevant interpretations in reports of WTO panels and of the Appellate Body adopted by the Dispute Settlement Body of the WTO, as well as in arbitration awards pursuant to Article 25 of the Dispute Settlement Understanding.

Article COMPROV.16: Private rights

1. With the exception of Articles [Cross-refer] of Part Three [Security], nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than

those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.

2. A Party shall not provide for a right of action under its law against the other Party on the ground that the other Party has acted in breach of this Agreement.

#### Article COMPROV.17: Definitions

For the purposes of this Agreement and any supplementing agreement, and unless otherwise specified:

[PLACEHOLDER for definitions of terms used throughout the agreement (e.g. “Member State”, “Union law”, “Withdrawal Agreement”, “transition period”, “personal data”, etc.)]

#### Article COMPROV.18: Implementation of the Withdrawal Agreement

The Parties reaffirm their obligation to implement the Withdrawal Agreement and recall Article 178(2)(b) thereof.

DRAFT

## PART TWO: ECONOMY AND TRADE

### *TITLE I: TRANSPARENCY*

#### Article TRNSY.1: Objective

1. Recognising the impact that their respective regulatory environment may have on trade and investment between them, the Parties aim at providing a predictable regulatory environment and efficient procedures for economic operators, especially small and medium-sized enterprises.
2. The Parties affirm their commitments in relation to transparency under the WTO Agreement, and build on those commitments in the provisions laid down in this Title.

#### Article TRNSY.2: Definition

For the purposes of this Title, “administrative decision” means a decision or action with a legal effect that applies to a specific person, good or service in an individual case, and covers the failure to take an administrative decision or take such action when that is so required in a Party's law.

#### Article TRNSY.3: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by Part Two [Economy and Trade] are promptly published via an officially designated medium and where feasible electronic means, or otherwise made available in such a manner as to enable any person to become acquainted with them.
2. To the extent appropriate, each Party shall provide an explanation of the objective of, and rationale for a measure referred to in paragraph 1.
3. Each Party shall provide a reasonable period of time between publication and entry into force of its laws and regulations with respect to any matter covered by this Agreement, except if it is not possible on grounds of urgency.

#### Article TRNSY.4: Enquiries

1. Each Party shall establish or maintain appropriate, proportionate mechanisms for responding to questions from any person regarding any laws or regulations relating to any matter covered by Part Two [Economy and Trade].
2. Each Party shall promptly provide information and respond to questions by the other Party pertaining to any law or regulation whether in force or planned, with respect to any matter covered Part Two [Economy and Trade], unless a specific mechanism is established under another provision of this Agreement.

#### Article TRNSY.5: Administration of measures of general application

1. Each Party shall administer in an objective, impartial, and reasonable manner its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by this Part.
2. When administrative proceedings are initiated relating to persons, goods or services of the other Party in respect of the application of laws or regulations related to any matter covered by this Part, each Party shall:

*[Alternative: Each Party, in applying a measure referred to in paragraph 1 to particular persons, goods or services of the other Party in specific cases shall]:*

- (a) endeavour to provide persons who are directly affected by administrative proceedings, with reasonable notice, in accordance with its laws and regulations, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and a general description of any issues in controversy;
- (b) afford such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision in so far as time, the nature of the proceedings and the public interest permit.

#### Article TRNSY.6: Review and appeal

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals and procedures for the purpose of the prompt review and, if warranted, correction of administrative decisions with respect to any matter covered by Part Two [Economy and Trade]. Each Party shall ensure that its tribunals carry out procedures for appeal or review in a non-discriminatory and impartial manner. Those tribunals shall be impartial and independent of the authority entrusted with administrative enforcement.
2. Each Party shall ensure that the parties to the proceedings in paragraph 1 are provided with a reasonable opportunity to support or defend their respective positions.
3. In accordance with its law, each Party shall ensure that any decisions adopted in the proceedings referred to in paragraph 1 are based on the evidence and submissions of record or, where applicable, on the record compiled by the competent administrative authority.
4. Each Party shall ensure that the decision in paragraph 3 shall, subject to appeal or further review as provided for in its law, be implemented by the authority entrusted with administrative enforcement.

#### Article TRNSY.7: Relation to other Titles

The provisions set out in this Title supplement the specific transparency rules set out in other Titles of Part Two [Economy and Trade].

### TITLE II: GOOD REGULATORY PRACTICES AND REGULATORY COOPERATION

#### Article GRP.1: General principles

1. Each Party shall be free to determine its approach to good regulatory practices under this Agreement in a manner consistent with its own legal framework, practice, procedures and fundamental principles, including the precautionary principle, underlying its regulatory system.
2. Nothing in this Title shall be construed as requiring a Party to:
  - a) deviate from domestic procedures for preparing and adopting regulatory measures;
  - b) take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives; or
  - c) achieve any particular regulatory outcome.

3. Nothing in this Title shall affect the right of a Party to define or regulate its own levels of protection in pursuit or furtherance of its public policy objectives in areas such as:
- (a) public health;
  - (b) human, animal or plant life and health;
  - (c) occupational health and safety;
  - (d) labour conditions;
  - (e) the environment including climate change;
  - (f) consumer protection;
  - (g) social protection and social security;
  - (h) data protection and cybersecurity;
  - (i) cultural diversity;
  - (j) the protection of investors, integrity and stability of the financial system;
  - (k) energy security; and
  - (l) anti-money laundering.
4. Regulatory measures shall not constitute a disguised barrier to trade.

#### Article GRP.2: Definitions

For the purposes of this Title:

- (a) “regulatory authority” means:
- (i) for the European Union: the European Commission; and
  - (ii) for the United Kingdom: [placeholder]
- (b) “regulatory measures” means:
- (i) for the European Union:
    - (1) regulations and directives, as provided for in Article 288 of the Treaty on the Functioning of the European Union (TFEU); and
    - (2) implementing and delegated acts, as provided for in Articles 290 and 291 TFEU, respectively; and
  - (ii) For the United Kingdom:
    - (1) Statutes;
    - (2) Statutory Instruments.

### Article GRP.3: Scope

1. This Title applies to regulatory measures proposed or issued, as appropriate, by the regulatory authority of each Party in respect of any matter covered by this Part [Economy and Trade].
2. Articles GRP.12 [Regulatory cooperation activities] and GRP.13 [Specialised Committee on regulatory cooperation] shall also apply to other measures of general application issued or proposed by the regulatory authority of a Party which are relevant for regulatory cooperation activities, such as guidelines, policy documents or recommendations.
3. This Title does not apply to regulatory authorities and regulatory measures, practices or approaches of the Member States of the European Union.

### Article GRP.4: Internal coordination

Each Party shall have in place internal coordination or review processes or mechanisms with respect to regulatory measures that its regulatory authority is preparing. Such processes or mechanisms should seek, *inter alia*, to:

- (a) foster good regulatory practices, including those set forth in this Title;
- (b) identify and avoid unnecessary duplication and inconsistent requirements in the Party's regulatory measures;
- (c) ensure compliance with international trade and investment obligations; and
- (d) promote consideration of the impacts of the regulatory measures under preparation, including those on small and medium-sized enterprises.

### Article GRP.5: Description of processes and mechanisms

Each Party shall make publicly available descriptions of the processes or mechanisms used by its regulatory authority to prepare, evaluate or review regulatory measures. These descriptions shall refer to relevant rules, guidelines or procedures, including those regarding opportunities for the public to provide comments.

### Article GRP.6: Early information on planned regulatory measures

1. Each Party shall make publicly available, in accordance with its respective rules and procedures, at least on an annual basis a list of planned major regulatory measures that its regulatory authority reasonably expects to propose or adopt within a year. The regulatory authority of each Party may determine what constitute "major" regulatory measures for the purposes of its obligations under this Title.
2. With respect to each major regulatory measure included in the list referred to in paragraph 1, each Party should also make publicly available, as early as possible:
  - (a) a brief description of its scope and objectives; and
  - (b) the estimated time for its adoption, including opportunities for public consultation.

### Article GRP.7: Public consultation

1. When preparing a major regulatory measure, each Party shall, in accordance with its respective rules and procedures, ensure that its regulatory authority:

- (a) publishes either the draft regulatory measure or the consultation documents providing sufficient details about such regulatory measure under preparation to allow any person to assess whether and how the person's interests might be significantly affected;
- (b) offers, on a non-discriminatory basis, reasonable opportunities for any person to provide comments; and
- (c) considers the comments received.

2. Each Party shall ensure that its regulatory authority makes use of electronic means of communication and seek to maintain a dedicated single website for the purposes of publishing the relevant regulatory measures or documents of the kind referred to in point (a) of paragraph 1 and of receiving comments related to public consultations.

3. Each Party shall ensure that its regulatory authority makes publicly available, in accordance with its respective rules and procedures, a summary of the results of the public consultations referred to in this Article and any comments received, except to the extent necessary to protect confidential information or withhold personal data or inappropriate content.

#### Article GRP.8: Impact assessment

1. Each Party affirms its intention to ensure that its regulatory authority carries out, in accordance with its respective rules and procedures, impact assessments for major regulatory measures it is preparing. Such rules and procedures may provide for exceptions.

2. When carrying out an impact assessment, each Party shall ensure that its regulatory authority has processes and mechanisms in place that promote the consideration of the following factors:

- (a) the need for the regulatory measure, including the nature and the significance of the problem that the regulatory measure intends to address;
- (b) if any, feasible and appropriate regulatory and non-regulatory options, including the option of not regulating, that would achieve the Party's public policy objectives;
- (c) to the extent possible and relevant, the potential social, economic and environmental impact of those options, including impacts on international trade and investment and on small and medium-sized enterprises; and
- (d) how the options under consideration relate to relevant international standards, if any, including, where appropriate, the reason for any divergence.

3. With respect to an impact assessment that a regulatory authority has conducted on a regulatory measure, each Party shall ensure that its regulatory authority prepares a final report detailing the factors it considered in its assessment and the relevant findings. Such reports shall be made publicly available no later than when the proposal for a regulatory measure referred to in Article GRP.2 b) (i) (1) or (ii) (1) [Definitions] or the regulatory measure referred to in Article GRP.2 b) (i) (2) or (ii) (2) [Definitions] is made publicly available.

#### Article GRP.9: Retrospective evaluation

1. Each Party shall ensure that its regulatory authority has in place processes or mechanisms to promote periodic retrospective evaluations of regulatory measures in effect.



2. When conducting a periodic retrospective evaluation, each Party shall ensure that its regulatory authority considers whether there are opportunities to more effectively achieve public policy objectives and reduce unnecessary regulatory burdens, including on small and medium-sized enterprises.

3. Each Party shall ensure that its regulatory authority makes publicly available its plans for and the results of such retrospective evaluations.

#### Article GRP.10: Regulatory register

Each Party shall ensure that regulatory measures that are in effect are published in a designated register that identifies regulatory measures by topic and that is publicly available online on a single, freely accessible website. The register should allow searches for regulatory measures by citations or by word. Each Party shall periodically update its register.

#### Article GRP.11: Exchange of information on good regulatory practices

The Parties shall endeavour to exchange information on their good regulatory practices as set out in this Title, including in the Specialised Committee on regulatory cooperation.

#### Article GRP.12: Regulatory cooperation activities

1. The Parties may engage in regulatory cooperation activities on a voluntary basis and without prejudice to the autonomy of their own decision-making and their respective legal orders. A Party may refuse to engage in or withdraw from regulatory cooperation activities. A Party that refuses to engage in or withdraws from regulatory cooperation activities should explain the reasons for its decision to the other Party.

2. Each Party may propose a regulatory cooperation activity to the other Party. It shall present its proposal via the contact point designated in accordance with Article GRP.14 [Contact points]. The other Party shall review that proposal in due course and shall inform the proposing Party whether it considers the proposed activity suitable for regulatory cooperation.

3. In order to identify activities suitable for regulatory cooperation, each Party shall consider:

- a) the list provided for in paragraph 1 of Article GRP.6 [Early information on planned regulatory measures]; and
- b) proposals for regulatory cooperation activities submitted by persons of a Party that are substantiated and accompanied by relevant information.

4. If the Parties decide to engage in a regulatory cooperation activity, the regulatory authority of each Party shall endeavour, where appropriate:

- a) inform the regulatory authority of the other Party about the preparation of new or the revision of existing regulatory measures and other measures of general application referred to in paragraph 2 of Article GRP.3 [Scope] that are relevant for the regulatory cooperation activity;
- b) on request, provide information and discuss regulatory measures and other measures of general application referred to in paragraph 2 of Article GRP.3 [Scope] that are relevant for the regulatory cooperation activity; and

- c) when preparing new or revising existing regulatory measures or other measures of general application referred to in paragraph 2 of Article GRP.3 [Scope], consider, to the extent feasible, any regulatory approach by the other Party on the same or a related matter.

#### Article GRP.13: Specialised Committee on regulatory cooperation

1. The Specialised Committee on regulatory cooperation shall enhance and promote good regulatory practices and regulatory cooperation between the Parties in accordance with the provisions of this Title.
2. The Specialised Committee on regulatory cooperation may invite interested persons to participate in its meetings.
3. The Specialised Committee on regulatory cooperation may:
  - (a) discuss information shared by the representatives of the Parties on, and promote, good regulatory practices;
  - (b) discuss possible regulatory cooperation activities;
  - (c) encourage regulatory cooperation and coordination in international fora, including, when appropriate, periodic bilateral exchanges of information on relevant ongoing or planned activities; and
  - (d) establish, as necessary, ad hoc working groups to pursue specific regulatory cooperation activities, which shall report to the Specialised Committee on regulatory cooperation.

#### Article GRP.14: Contact points

Within a month after the entry into force of the Agreement, each Party shall designate a contact point to facilitate the exchange of information between the Parties.

#### Article GRP.15: Non-application of dispute settlement

Title II of Part Five [Dispute settlement] shall not apply in respect of disputes regarding the interpretation and application of this Title.

### *TITLE III: LEVEL PLAYING FIELD AND SUSTAINABILITY*

#### Chapter one: General principles

##### Article LPFS.1.1: Objectives

1. The Parties recognise that the establishment of conditions that ensure a level playing field between the Parties is necessary for trade and investment between the Union and the United Kingdom to be conducted within an environment of open and fair competition and in a manner that is conducive to sustainable development.
2. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing and affirm their commitment to promote the development of international trade and investment in a way that contributes to the objective of sustainable development.
3. The Parties affirm their common understanding that their economic partnership can only deliver benefits in a mutually satisfactory way if it prevents distortions of trade and unfair

competitive advantages and contributes to sustainable development. To that end, the Parties are determined to maintain high standards in the areas of state aid, competition, state-owned enterprises, taxation, social and labour protection, environmental protection and the fight against climate change.

4. Taking account of the geographic proximity and economic interdependence and connectedness of the Union and the United Kingdom, and the fact that the Union and the United Kingdom share a common biosphere in respect of cross-border pollution, as well as the significance of building and maintaining a mutually beneficial economic partnership, the Parties agree to establish long-lasting and robust commitments that prevent distortions of trade and unfair competitive advantages and ensure that their mutual trade and investment contributes to sustainable development.

5. The Parties affirm their commitment to continue improving their respective levels of protection with the goal of ensuring high levels of protection in the areas covered by this Title.

6. The Partnership Council may include additional areas or lay down higher standards than those referred to in paragraph 3 with a view to ensuring the maintenance of a level playing field between them over time.

#### Article LPFS.1.2: Right to regulate and precautionary principle

1. The Parties affirm the right of each Party to set policies and priorities in the areas covered by this Title, to determine the levels of protection it deems appropriate and to adopt or modify its relevant law and policies. Such levels of protection, law and policies shall be consistent with each Party's commitments under this Title.

2. Where scientific evidence is insufficient, inconclusive or uncertain and there are indications through preliminary objective scientific evaluation that there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant health may be inconsistent with the chosen level of protection, a Party may adopt measures to prevent such damage, in accordance with the precautionary principle.

## Chapter two: Specific areas of level playing field and sustainability

### *Section 1: State aid control*

#### Article LPFS.2.1: General provisions

1. With a view to preserving a robust and comprehensive framework for State aid control that prevents undue distortions of trade and competition, the United Kingdom shall give effect to acts and provisions listed in ANNEX LPFS-X to this Agreement, in respect of measures of the United Kingdom authorities which affect trade between the Union and the United Kingdom. However, in respect of such measures of the United Kingdom authorities, references to the European Commission in those provisions shall be read as referring to the relevant authority referred to in Article LPFS.2.4 [Relevant authority].

For the purpose of this Section and of Article AIRTRN.10 [Fair competition], references to acts and provisions listed in ANNEX LPFS-X shall be read as referring to these acts and provisions as amended or replaced.

2. Notwithstanding paragraph 1, the acts and provisions listed in ANNEX LPFS-X shall not apply with respect to domestic support measures of the United Kingdom authorities within the meaning of Part IV of the WTO Agreement on Agriculture up to a determined maximum overall annual level of support, and provided that a determined minimum percentage of that domestic support complies with the provisions of Annex 2 to the WTO Agreement on Agriculture. The determination of the maximum exempted overall annual level of support and the minimum percentage shall be set by the Specialised Committee on the Level Playing Field and Sustainability and governed by the procedures set out in Article LPFS.2.3 [Procedures referred to in Article LPFS.2.1(2)].

#### Article LPFS.2.2: New acts or provisions in the area of State aid control

1. Where the Union adopts a new act or provision that falls within the scope of this Section, but neither amends nor replaces an act or provision listed in ANNEX LPFS-X, the Union shall inform the United Kingdom of the adoption of that act in the Specialised Committee on the Level Playing Field and Sustainability. Upon the request of the Union or the United Kingdom, the Specialised Committee on the Level Playing Field and Sustainability shall hold an exchange of views on the implications of the new act or provision for the proper functioning of this Section, within 6 weeks after the request.

2. As soon as reasonably practical after the Union has informed the United Kingdom in the Specialised Committee on the Level Playing Field and Sustainability, the Specialised Committee on the Level Playing Field and Sustainability shall either:

- (a) adopt a decision adding the new act or provision to ANNEX LPFS-X; or
- (b) where an agreement on adding the new act or provision to ANNEX LPFS-X cannot be reached, examine all further possibilities to maintain the good functioning of this Section and take any decision necessary to this effect, without prejudice to the possibility for the Union to take appropriate interim measures under Article LPFS.2.9.1(c) [Interim measures].

#### Article LPFS.2.3: Procedures referred to in Article LPFS.2.1(2) [General provisions]

1. Within [six] months of the date of entry into force of this Agreement, the Specialised Committee on the Level Playing Field and Sustainability shall determine the initial maximum exempted overall annual level of support and the initial minimum percentage referred to in Article LPFS.2.1(2) [General provisions], taking into account the most recent information available. The initial maximum exempted overall annual level of support shall be informed by the design of the

United Kingdom's future agricultural support scheme as well as by the annual average of the total amount of domestic support incurred in the United Kingdom during the period of the current Multiannual Financial Framework 2014-2020. The initial minimum percentage shall be informed by the design of the United Kingdom's agricultural support scheme as well as by the percentage to which the overall domestic support in the Union complied with the provisions of Annex 2 to the WTO Agreement on Agriculture as notified for the period concerned.

2. The Specialised Committee on the Level Playing Field and Sustainability shall adjust the level of support and percentage referred to in the first paragraph, informed by the design of the United Kingdom's agricultural support scheme, to any variation in the overall amount of domestic support in the Union in each subsequent Multiannual Financial Framework.

3. If the Specialised Committee on the Level Playing Field and Sustainability fails to adjust the level of support and percentage in accordance with the second paragraph within one year of the date of entry into force of a new Multiannual Financial Framework, the application of Article LPFS.2.1(2) [General provisions] shall be suspended until the Specialised Committee on the Level Playing Field and Sustainability has adjusted the level of support and percentage.

#### Article LPFS.2.4: Relevant authority

1. The United Kingdom shall establish or maintain an operationally independent authority ("the relevant authority"). In performing its duties and exercising its powers, the relevant authority shall have the necessary guarantees of independence from political or other external influence and shall act impartially.

2. In respect of measures of the United Kingdom authorities that are subject to Article LPFS.2.1(1) [General provisions], the relevant authority shall have powers and functions equivalent to those of the European Commission acting under the acts and provisions listed in ANNEX LPFS-X. The relevant authority shall be appropriately equipped with the resources necessary for the full application and the effective enforcement, in accordance with Article LPFS.2.1(1) [General provisions], of the acts and provisions listed in ANNEX LPFS-X.

3. Decisions of the relevant authority shall produce in respect of and in the United Kingdom the same legal effects as those which comparable decisions of the European Commission acting under the acts and provisions listed in ANNEX LPFS-X produce within the Union and its Member States.

#### Article LPFS.2.5: Cooperation

1. With a view to ensuring consistent surveillance in the field of State aid in the Union and the United Kingdom, the Union and the United Kingdom shall cooperate.

2. To guarantee uniform implementation, application and interpretation of the acts and provisions listed in ANNEX LPFS-X throughout the territory of the Parties and to guarantee the harmonious development of those rules, the European Commission and the relevant authority may:

- (a) exchange information and views on the implementation, application and interpretation of the acts and provisions listed in ANNEX LPFS-X;
- (b) provide on a case-by-case basis information and exchange views on individual State aid cases which affect trade as provided in Article LPFS.2.1(1) [General provisions].

3. The European Commission and the relevant authority may consult each other on all draft decisions they intend to adopt in respect of measures that affect trade as provided in Article LPFS.2.1(1) [General provisions]. To that end:

- (a) The European Commission may consult the relevant authority on draft decisions in respect of measures of Member States. The relevant authority shall have up to three months to communicate its opinion. In case of urgency, the European Commission may invite the relevant authority to communicate its opinion as soon as possible.
- (b) The relevant authority may consult the European Commission on draft decisions in respect of measures of the United Kingdom authorities. The European Commission shall have up to three months to communicate its opinion. In case of urgency, the relevant authority may invite the European Commission to communicate its opinion as soon as possible.
4. The European Commission and the relevant authority shall communicate to each other their respective decisions to open the procedure referred to in the first and second subparagraphs of Article 108(2) of the TFEU in respect of measures that affect trade as provided in Article LPFS.2.1(1) [General provisions]. To that end:
- (a) The European Commission shall communicate its decisions in respect of measures of Member States to the relevant authority and give it the opportunity to submit its comments in accordance with the applicable time limits set in Council Regulation (EU) 2015/1589<sup>1</sup>.
- (b) The relevant authority shall communicate its decisions in respect of measures of the United Kingdom authorities to the European Commission and give it the opportunity to submit its comments in accordance with the applicable time limits set in Council Regulation (EU) 2015/1589<sup>2</sup>.
5. The European Commission and the relevant authority shall communicate to each other their decisions in respect of measures that affect trade between the Union and the United Kingdom as provided for in Article LPFS.2.1(1) [General provisions]. This obligation is deemed to be fulfilled if the decisions are published by the Party or on its behalf on a publicly accessible website within one year from the adoption of the decision.

#### Article LPFS.2.6: Courts and tribunals of the United Kingdom

1. Noting that the Court of Justice of the European Union has jurisdiction under the Treaties in respect of acts of the European Commission in the area of State aid, in respect of measures of the United Kingdom authorities that are subject to Article LPFS.2.1(1) [General provisions], the United Kingdom shall ensure that courts or tribunals in the United Kingdom are competent to:
- (a) review and enforce compliance by the United Kingdom's authorities with the obligation under Article LPFS.2.1(1) [General provisions], in conjunction with Article 108(3) of the TFEU, to notify in due time the relevant authority of any intended measure to grant or alter aid, and not to put such intended measure in effect until the relevant authority has authorised it;
- (b) review the compliance of the decisions taken by the relevant authority with the acts and provisions listed in ANNEX LPFS-X;
- (c) review and enforce compliance with a decision of the relevant authority by the United Kingdom's authorities, and impose penalties in case of non-compliance;
- (d) decide on actions for a failure of the relevant authority to act, and order the relevant authority to act; and

---

<sup>1</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

<sup>2</sup> *ibid.*

(e) decide on actions for private damages and award such damages.

2. The United Kingdom shall ensure that, when, in performing their competences under paragraph 1, a question of interpretation of a concept of Union law or a question of interpretation of a provision of Union law referred to in the acts and provisions listed in ANNEX LPFS-X arises, courts or tribunals in the United Kingdom may request the Court of Justice of the European Union to give a preliminary ruling on the question. The Court of Justice of the European Union shall have jurisdiction to give such a ruling and such ruling shall be binding on the referring courts or tribunals of the United Kingdom.

3. The European Commission and interested parties shall have legal standing before courts or tribunals in the United Kingdom to bring cases in respect of measures of the United Kingdom authorities that are subject to Article LPFS.2.1(1) [General provisions].

The terms “interested party” and “interested parties” in this Article shall have the same meaning as they have under the acts and provisions listed in ANNEX LPFS-X.

4. The European Commission shall have the right to intervene in cases referred to in paragraph 3 brought before courts or tribunals in the United Kingdom by the relevant authority or any interested party.

#### Article LPFS.2.7: Request for information

1. If a Party considers that State aid granted by the other Party may lead to a serious risk of undue distortion of trade or competition between the Union and the United Kingdom, the first Party may request the following information about the aid:

- a. the legal basis and policy objective or purpose of the aid;
- b. the name of the recipient of the aid, if possible;
- c. the dates and duration of the aid and any other time limits attached to it;
- d. the eligibility requirements of the aid;
- e. the appropriateness and the form of the aid;
- f. the incentive effect of the aid;
- g. the total amount or the annual amount budgeted for the aid and its proportionality to the objective; and
- h. any other information permitting an assessment of the distortive effects of the aid.

2. The requested information shall be provided in writing no later than 30 days after the date of receipt of the request. In the event that any requested information is not provided, the requested Party shall explain the absence of such information in its written response.

#### Article LPFS.2.8: Consultations

1. If the Union considers that the United Kingdom is giving effect to Article LPFS.2.1 [General provisions], Article LPFS.2.4 [Relevant authority], Article LPFS.2.5 [Cooperation] or Article LPFS.2.6 [Courts and tribunals of the United Kingdom] in a way that leads to a serious risk of undue distortion of trade or competition between the Union and the United Kingdom, it may request consultations within the Specialised Committee on the Level Playing Field and Sustainability with a view to finding a mutually agreed solution.

2. The consultations shall take place on the basis of a written request that includes an explanation of the Union's reasons for requesting the consultation. A meeting of the Specialised Committee on the Level Playing Field and Sustainability shall be held within 30 days of the request.

#### Article LPFS.2.9: Interim measures

1. The Union shall be entitled to take appropriate interim measures, after giving notice to the United Kingdom, in the following cases:

- (a) if consultations were not held or if they were held but no mutually agreed solution was put in effect within 30 days of the meeting of the Specialised Committee on the Level Playing Field and Sustainability referred to in Article LPFS.2.8(2) [Consultations]; or
- (b) after the Union has filed a request for consultations pursuant to Article INST.13 [Consultations in the framework of the Partnership Council] or Article INST.14 [Accelerated consultations] of Title II of Part Five [Dispute settlement], if the Union considers that the alleged breach of Article LPFS.2.1 [General provisions], Article LPFS.2.4 [Relevant authority], Article LPFS.2.5 [Cooperation] or Article LPFS.2.6 [Courts and tribunals of the United Kingdom] of this Section leads to a risk of undue distortion of trade or competition between the Union and the United Kingdom; or
- (c) where the Union adopts a new act or provision that falls within the scope of this Section, which neither amends nor replaces any of the acts or provisions listed in ANNEX LPFS-X and the Specialised Committee on the Level Playing Field and Sustainability fails to add the new act or provision in ANNEX LPFS-X in accordance with Article LPFS.2.2 [New acts or provisions in the area of State aid control] because the United Kingdom does not agree to the addition within a reasonable period of time.

2. In the cases referred to in points (a) and (b) of paragraph 1, the appropriate interim measures taken by the Union may take effect at the earliest 15 days after the Union has notified the United Kingdom.

3. In the case referred to in point (c) of paragraph 1, the appropriate interim measures taken by the Union may take effect at the earliest 6 months after the Union has notified the United Kingdom of its intention to take such measures, but in no event shall such measures take effect before the date on which the new act or provision is implemented in the Union.

4. The appropriate interim measures taken by the Union shall cease to apply if:

- (a) in the cases referred to in points (a) and (b) of paragraph 1, the Union is satisfied that the risk of undue distortion of trade or competition between the Union and the United Kingdom has been remedied; or
- (b) in the case referred to in point (b) of paragraph 1, an arbitration tribunal established in accordance with Title II of Part Five [Dispute settlement], has decided that the United Kingdom has not failed to comply with its obligations under Article LPFS.2.1 [General provisions] and Articles LPFS.2.4 [Relevant authority] to LPFS.2.6 [Courts and tribunals of the United Kingdom]; in such cases the interim measures shall cease to apply within 30 days after the ruling has been rendered by the arbitration tribunal; or
- (c) in the case referred to in point (c) of paragraph 1, the United Kingdom notifies its agreement to the addition of the new act or provision in ANNEX LPFS-X in accordance with Article LPFS.2.2 [New acts or provisions in the area of State aid control] within the Specialised Committee on the Level Playing Field and Sustainability.



## *Section 2: Competition*

### Article LPFS.2.10: Principles

1. The Union and the United Kingdom recognise the importance of free and undistorted competition in their trade and investment relations. The Union and the United Kingdom acknowledge that anticompetitive business practices and concentrations between undertakings have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation.

2. This Section is without prejudice to the specific provisions applicable in the Union to the production of and trade in agricultural products in accordance with Article 42 of the TFEU, and equivalent law and practices applicable in the United Kingdom.

### Article LPFS.2.11: Agreements between undertakings

1. The following shall be prohibited insofar as they may affect trade between the Union and the United Kingdom: all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall automatically be void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- (a) any agreement or category of agreements between undertakings;
- (b) any decision or category of decisions by associations of undertakings; or
- (c) any concerted practice or category of concerted practices

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; or
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

#### Article LPFS.2.12: Abuse of a dominant position

1. Any abuse by one or more undertakings of a dominant position in the territories of the Union and the United Kingdom as a whole or in a substantial part thereof shall be prohibited, insofar as it may affect trade between the Union and the United Kingdom.
2. Such abuse may, in particular, consist in:
  - (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - (b) limiting production, markets or technical development to the prejudice of consumers;
  - (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
  - (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

#### Article LPFS.2.13: Concentrations between undertakings

Concentrations between undertakings which are notifiable to the United Kingdom or the Union or to one or more of its Member States and which threaten to significantly impede effective competition or to substantially lessen competition, in particular as a result of the creation or strengthening of a dominant position, shall be declared incompatible, insofar as they affect trade between the Union and the United Kingdom, unless remedies are offered or imposed to address adequately the identified competition concerns.

#### Article LPFS.2.14: Public undertakings, undertakings granted special or exclusive rights and designated monopolies

1. In the case of public undertakings and undertakings to which the Member States of the Union or the United Kingdom grant special or exclusive rights, the Union and the United Kingdom shall ensure that no measures contrary to the rules contained in Articles LPFS.2.11 [Agreements between undertakings] to LPFS.2.13 [Concentrations between undertakings] are either enacted or maintained in force.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of revenue-producing monopoly shall be subject to the rules contained in Articles LPFS.2.11 [Agreements between undertakings] to LPFS.2.13 [Concentrations between undertakings], insofar as the application of those rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union and the United Kingdom.

#### Article LPFS.2.15: Implementation

1. The Parties shall take all appropriate measures to ensure that their respective competition rules address in an effective manner all of the practices set out in Articles LPFS.2.11 [Agreements between undertakings] to LPFS.2.14 [Public undertakings, undertakings granted special or exclusive rights and designated monopolies].
2. The Parties shall enforce the rules referred to in paragraph 1 in their respective territories.

For the purposes of paragraph 2, the Parties shall establish or maintain an operationally independent authority or authorities (“the relevant authority”). The relevant authority shall have the necessary guarantees of independence from political or other external influence and shall be able to perform its duties and exercise its powers impartially. The relevant authority shall be appropriately equipped with the resources necessary for the full application and the effective enforcement of all the practices set out in Articles LPFS.2.11 [Agreements between undertakings] to LPFS.2.14 [Public undertakings, undertakings granted special or exclusive rights and designated monopolies].

3. Each Party shall apply the competition law referred to in paragraph 1 in a transparent and non-discriminatory manner, respecting the principles of procedural fairness including the rights of defence of the undertakings concerned, irrespective of their nationality or ownership status.

#### Article LPFS.2.16: Cooperation

1. In order to enhance effective competition enforcement, the Parties acknowledge that it is in their common interest to promote cooperation with regard to competition policy development and the investigation of cases relating to anticompetitive conduct and concentrations.

2. For the purposes of paragraph 1, the competition authorities of the Member States or the European Commission, on the one side, and the relevant authority, on the other side, shall endeavour to coordinate, where this is possible and appropriate, their enforcement activities relating to the same or related conducts and transactions.

3. To facilitate the cooperation referred to in paragraphs 1 and 2, the competition authorities of the Member States or the European Commission, on the one side, and the relevant authority, on the other side, may exchange information.

4. In implementing the objectives of this Article, the Parties, or their respective competition authorities, may enter into a separate agreement or agree upon a separate framework regarding cooperation between the competition authorities.

#### Article LPFS.2.17: Enforcement and dispute settlement

1. The Parties shall ensure the effective enforcement in their respective territory of the provisions in Articles LPFS.2.11 [Agreements between undertakings] to LPFS.2.14 [Public undertakings, undertakings granted special or exclusive rights and designated monopolies] and shall not reduce the effectiveness of public and private enforcement of their competition law and practices.

In particular, each Party shall establish administrative and judicial proceedings allowing public authorities and interested natural or legal persons to bring timely actions against violations of its competition law and practices, and provide for remedies, including interim measures, which shall ensure that sanctions are effective, proportionate and dissuasive and have a real and deterrent effect.

2. Title II of Part Five [Dispute settlement] does not apply to this Section, with the exception of the obligation in paragraph 1 of Article LPFS.2.15 [Implementation].

### *Section 3: State-owned enterprises*

## Article LPFS.2.18: Definitions

For the purposes of this Section:

- (a) “Arrangement” means the Arrangement on Officially Supported Export Credits, developed within the framework of the Organization for Economic Co-operation and Development (OECD) or a successor undertaking, whether developed within or outside of the OECD framework that has been adopted by at least 12 original WTO Members that were Participants to the Arrangement as of 1 January 1979;
- (b) “commercial activities” means activities, the end result of which is the production of a good or the supply of a service to be sold in the relevant market in quantities and at prices determined by an enterprise [in function of the conditions of supply and demand], and which are undertaken with an orientation towards profit-making; activities undertaken by an enterprise which operates on a non-profit basis or a cost-recovery basis are not activities undertaken with an orientation towards profit-making;
- (c) “commercial considerations” means price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately-owned enterprise operating according to market economy principles in the relevant business or industry;
- (d) “designate” means to establish or authorise a monopoly, or to expand the scope of a monopoly to cover an additional good or service;
- (e) “designated monopoly” means an entity, including a consortium or a government agency that in a relevant market in the territory of a Party is designated as the sole supplier or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of the grant;
- (f) “enterprise granted special rights or privileges” means any enterprise, public or private, to which a Party has granted special rights or privileges, in law or in fact;
- (g) “service supplied in the exercise of governmental authority” means a service supplied in the exercise of governmental authority as defined in GATS and, if applicable, in Section 5 of Chapter Five of Title VI [Financial services];
- (h) “special rights or privileges” means rights or privileges by which a Party designates or limits to two or more the number of enterprises authorised to provide a good or a service, other than according to objective, proportional and non-discriminatory criteria, thereby substantially affecting the ability of any other enterprise to supply the same good or service in the same geographical area [or product market] under substantially equivalent conditions; and
- (i) “state-owned enterprise” enterprise means an enterprise in which a Party:
  - (i) directly owns more than 50 % of the share capital;
  - (ii) controls, directly or indirectly, the exercise of more than 50 % of the voting rights;
  - (iii) holds the power to appoint a majority of the members of the board of directors or any other equivalent management body; or
  - (iv) has the power to exercise control over the enterprise. For the establishment of control, all relevant legal and factual elements shall be taken into account on a case-by-case basis.

## Article LPFS.2.19: Scope

1. This Section applies to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies, at all levels of government, engaged in commercial activities. If a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly engages both in commercial and non-commercial activities, only the commercial activities are covered by this Section.

2. This Section does not apply to:

- (a) state-owned enterprises, enterprises granted special rights or privileges or designated monopolies when acting as procuring entities conducting covered procurement as defined in Article PPROC.2(2) [Incorporation of certain provisions of the GPA and covered procurement] of Title X [Public Procurement] or as covered under each Party's annexes to Appendix I to the GPA; and
- (b) any service supplied in the exercise of governmental authority;

3. Article LPFS.2.22 [Non-discrimination and commercial considerations] does not apply to the supply, pursuant to a government mandate, of financial services by a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly, if that supply of financial services:

- (a) supports exports or imports, provided that those services are:
  - (i) not intended to displace commercial financing; or
  - (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market;
- (b) supports private investment outside the territory of the Party, provided that those services are:
  - (i) not intended to displace commercial financing; or
  - (ii) offered on terms no more favourable than those that could be obtained for comparable financial services in the commercial market; or
- (c) is offered on terms consistent with the Arrangement, provided it falls within the scope of the Arrangement.

4. Article LPFS.2.22 [Non-discrimination and commercial considerations] shall apply to the sectors set out in Article SERVIN.1.1 of Chapter one [General Provisions] of Title VI [Services and investment] and in Chapter one [Air transport] of Title XII [Transport].

5. Article LPFS.2.22 [Non-discrimination and commercial considerations] does not apply to the extent that a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly of a Party makes purchases or sales of goods or services pursuant to:

- (a) any existing non-conforming measure that the Party maintains, continues, renews or amends in accordance with Article SERVIN 2.7 [Non-conforming measures] of Chapter two [Investment liberalisation] or Article SERVIN.3.5 [Non-conforming measures] of Chapter three [Cross-border trade in services] of Title VI [Services and investment] as set out in its Schedules to ANNEXES SERVIN-1 and SERVIN-2; or

- (b) any non-conforming measure that the Party adopts or maintains with respect to sectors, subsectors, or activities in accordance with Article SERVIN 2.7 [Non-conforming measures] of Chapter two [Investment liberalisation] or Article SERVIN.3.5 [Non-conforming measures] of Chapter three [Cross-border trade in services] of Title VI [Services and investment] as set out in its Schedules to ANNEXES SERVIN-1 and SERVIN-2.

#### Article LPFS.2.20: Relation to the WTO Agreement

The Parties affirm their rights and obligations under paragraphs 1 to 3 of Article XVII of GATT 1994, the Understanding on the Interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994, as well as under paragraphs 1, 2 and 5 of Article VIII of GATS.

#### Article LPFS.2.21: General provisions

1. Without prejudice to the rights and obligations of each Party under this Section, nothing in this Section prevents a Party from establishing or maintaining state-owned enterprises, granting enterprises special rights or privileges, or designating or maintaining monopolies.
2. A Party shall not require or encourage a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly to act in a manner inconsistent with this Section.

#### Article LPFS.2.22: Non-discriminatory treatment and commercial considerations

1. Each Party shall ensure that each of its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies, when engaging in commercial activities:
  - (a) acts in accordance with commercial considerations in its purchase or sale of a good or a service, except to fulfil the terms of a public service mandate that are not inconsistent with subparagraphs (b) or (c);
  - (b) in its purchase of a good or a service:
    - (i) accords to a good or a service supplied by an enterprise of the other Party treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party; and
    - (ii) accords to a good or a service supplied by an enterprise that is a covered enterprise within the meaning of Article SERVIN.1.2 [Definitions] in Chapter one [General Provisions] of Title VI [Services and investment] in the Party's territory, treatment no less favourable than it accords to a like good or a like service supplied by enterprises of the Party in the relevant market in the Party's territory; and
  - (c) in its sale of a good or a service:
    - (i) accords to an enterprise of the other Party treatment no less favourable than it accords to enterprises of the Party; and
    - (ii) accords to an enterprise that is a covered enterprise within the meaning of Article SERVIN.1.2 [Definitions] in Chapter one [General provisions] of Title VI [Services and investment] in the Party's territory, treatment no less favourable than it accords to enterprises of the Party in the relevant market in the Party's territory.

2. Paragraph 1 does not preclude state-owned enterprises, enterprises granted special rights or privileges or designated monopolies from:
  - (a) purchasing or supplying goods or services on different terms or conditions, including those relating to price, provided that such different terms or conditions are in accordance with commercial considerations; or
  - (b) refusing to purchase or supply goods or services, provided that such refusal is in accordance with commercial considerations.

#### Article LPFS.2.23: Regulatory framework

1. Each Party shall respect and make best use of relevant international standards including the OECD Guidelines on Corporate Governance of State-Owned Enterprises.
2. Each Party shall ensure that any regulatory body, or any other body exercising a regulatory function, that the Party establishes or maintains:
  - (a) is independent from, and not accountable to, any of the enterprises regulated by that body; and
  - (b) in like circumstances, acts impartially with respect to all enterprises regulated by that body, including state-owned enterprises, enterprises granted special rights or privileges and designated monopolies. The impartiality with which the body exercises its regulatory functions is to be assessed by reference to a general pattern or practice of that body. For those sectors in which the Parties have agreed to specific obligations relating to such a body in this Agreement, the relevant provisions of this Agreement shall prevail.
3. Each Party shall apply its laws and regulations to state-owned enterprises, enterprises granted special rights or privileges and designated monopolies in a consistent and non-discriminatory manner.

#### Article LPFS.2.24: Information exchange

1. A Party which has reason to believe that its interests under this Section are being adversely affected by the commercial activities of a state-owned enterprise, an enterprise granted special rights or privileges or a designated monopoly (hereinafter referred to in this Article as "the entity") of the other Party may request the other Party in writing to provide information on the commercial activities of that entity in accordance with paragraph 2.
2. The requested Party shall provide the requested information, provided that the request includes an explanation of how the activities of the entity may be affecting the interests of the requesting Party under this Section and indicates which of the following elements of information shall be provided:
  - (a) the ownership and the voting structure of the entity, indicating the percentage of shares and the percentage of voting rights that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies cumulatively have in the entity;
  - (b) a description of any special shares or special voting or other rights that the requested Party, its state-owned enterprises, enterprises granted special rights or privileges or designated monopolies hold, to the extent that such rights are different from those attached to the general common shares of the entity;

- (c) a description of the organisational structure of the entity and the composition of its board of directors or of any equivalent body;
- (d) a description of the government departments or public bodies which regulate or monitor the entity, a description of the reporting requirements imposed on it by those departments or public bodies, and the rights and practices of those departments or public bodies with respect to the appointment, dismissal or remuneration of senior executives and members of its board of directors or any equivalent body;
- (e) the annual revenue and total assets of the entity over the most recent three-year period for which information is available;
- (f) any exemptions, immunities and related measures from which the entity benefits under the laws and regulations of the requested Party; and
- (g) any additional information regarding the entity that is publicly available, including annual financial reports and third party audits.

3. Paragraphs 1 and 2 shall not require a Party to disclose confidential information the disclosure of which would be inconsistent with its laws and regulations, impede law enforcement, or otherwise be contrary to the public interest or prejudice the legitimate commercial interests of particular enterprises.

4. If the requested information is not available, the requested Party shall provide the reasons for this in writing to the requesting Party.

5. This Article does not apply to small and medium-sized enterprises.

#### *Section 4: Taxation*

##### Article LPFS.2.25: Good governance

1. The Parties recognise and commit to implement the principles of good governance in the area of taxation, including the global standards on transparency and exchange of information, fair taxation, and the OECD standards against Base Erosion and Profit Shifting (BEPS). The Parties shall promote good governance in tax matters, improve international cooperation in the area of taxation and facilitate the collection of tax revenues.

2. The Parties, reflecting the direction set by the G20-OECD BEPS Action Plan, reaffirm their commitment to curb harmful tax measures.

In this context, the Parties reaffirm their commitment to the Code of Conduct for business taxation set out in the conclusions of the Council of Ministers of 1 December 1997 as reflected in the mandate and criteria established by those conclusions, as well as the guidance relating to the Code of Conduct, as applicable at the end of the transition period.

3. Title II of Part Five [Dispute settlement] does not apply to this Article.

##### Article LPFS.2.26: Taxation standards

1. A Party shall not adopt or maintain any measure that weakens or reduces the levels of protection against tax avoidance provided by the Party's law and practices and by the enforcement thereof, below the level provided by the common high standards applicable in the Union and the United Kingdom at the end of the transition period, and by their enforcement, in relation to:



- (a) the exchange of information on income, financial accounts, cross-border tax rulings, country-by-country reports between tax administrations, beneficial ownership and potential cross-border tax planning arrangements;
- (b) rules against tax avoidance practices; and
- (c) public country-by-country reporting by credit institutions and investment firms.

2. The Partnership Council may modify the common standards in paragraph 1 in order to include therein additional areas or to lay down higher standards.

#### *Section 5: Labour and social protection*

##### Article LPFS.2.27: Non-regression of the level of protection

1. A Party shall not adopt or maintain any measure that weakens or reduces the level of labour and social protection provided by the Party's law and practices and by the enforcement thereof, below the level provided by the common standards applicable within the Union and the United Kingdom at the end of the transition period, and by their enforcement.
2. For the purpose of this Section, and without prejudice to Article LPFS.2.28(3)(b) [Future levels of protection], labour and social protection covers the following areas: (i) fundamental rights at work, (ii) occupational health and safety standards, (iii) fair working conditions and employment standards, and (iv) information and consultation rights at company level, and (v) restructuring.

##### Article LPFS.2.28: Future levels of protection

1. Each Party shall seek to increase, through its relevant law and practices and through the enforcement thereof, the level of labour and social protection above the level of protection referred to in Article LPFS.2.27 [Non-regression of the level of protection].
2. Where both Parties have increased, through their relevant law and practices and through the enforcement thereof, the level of labour and social protection above the level referred to in Article LPFS.2.27 [Non-regression of the level of protection], neither Party shall weaken or reduce its level of labour or social protection below a level of protection which is at least equivalent to that of the other Party's increased level of labour and social protection.
3. The Partnership Council may:
  - (a) lay down standards providing for a higher level of labour and social protection than that referred to in Article LPFS.2.27(1) [Non-regression of the level of protection];
  - (b) include additional areas in the concept of labour and social protection referred to in Article LPFS.2.27(2) [Non-regression of the level of protection].

##### Article LPFS.2.29: Enforcement

For the purpose of enforcement as referred to in Article LPFS.2.27 [Non-regression of the level of protection] and in Article LPFS.2.28 [Future levels of protection], each Party shall set up or maintain a transparent and adequately resourced system for the effective domestic enforcement, in particular an effective system of labour inspections; establish administrative and judicial proceedings, which shall allow public authorities and individuals to bring timely actions against violations of the labour and social law; and provide for remedies, including interim measures, which shall ensure that sanctions are effective, proportionate and dissuasive and have a real and deterrent effect.

## *Section 6: Environment and health*

### Article LPFS.2.30: Non-regression of the level of protection

1. A Party shall not adopt or maintain any measure that weakens or reduces the level of environmental protection provided by the Party's law and practices and by the enforcement thereof, below the level provided by the common standards applicable and targets agreed within the Union and the United Kingdom at the end of the transition period, and by their enforcement.
2. For the purpose of this Section, and without prejudice to Article LPFS.2.31(3)(b) [Future levels of protection], environmental protection covers the following areas: (i) access to environmental information, public participation and access to justice in environmental matters; (ii) environmental impact assessment and strategic environmental assessment; (iii) industrial emissions; (iv) air emissions and air quality targets and ceilings; (v) nature and biodiversity conservation; (vi) waste management; (vii) the protection and preservation of the aquatic environment; (viii) the protection and preservation of the marine environment; and (ix) the prevention, reduction and elimination of risks to human and animal health or the environment arising from the production, use, release and disposal of chemical substances; and (x) health and sanitary safety in the agricultural and food sector.
3. For the purpose of this Section, common targets agreed in the Union and the United Kingdom at the end of the transition period shall also include those targets whose attainment is envisaged for a date that is subsequent to the end of the transition period.
4. Reflecting their common principles at the end of the transition period and their commitment to the 1992 Rio Declaration on Environment and Development, in giving effect to the obligations set out in this Section, the Parties shall respect the following principles in their respective environmental law and practices:
  - (a) the precautionary principle;
  - (b) the principle that preventive action should be taken;
  - (c) the principle that environmental damage should as a priority be rectified at source; and
  - (d) the "polluter pays" principle.

### Article LPFS.2.31: Future levels of protection

1. Each Party shall seek to increase, in its relevant law and practices and through the enforcement thereof, the level of environmental protection above the level of protection referred to in Article LPFS.2.30 [Non-regression of the level of protection].
2. Where both Parties have increased, through their relevant law and practices and through the enforcement thereof, the level of environmental protection above the level referred to in Article LPFS.2.30 [Non-regression of the level of protection], neither Party shall weaken or reduce its level of environmental protection below a level of protection which is at least equivalent to that of the other Party's increased level of environmental protection.
3. The Partnership Council may:
  - (a) lay down standards providing for a higher level of environmental protection than that referred to in Article LPFS.2.30(1) [Non-regression of the level of protection];

(b) include additional areas in the concept of environmental protection referred to in Article LPFS.2.30(2) [Non-regression of the level of protection].

#### Article LPFS.2.32: Monitoring and enforcement

1. For the purpose of enforcement as referred to in Article LPFS.2.30 [Non-regression of the level of protection] and in Article LPFS.2.31 [Future levels of protection], each Party shall establish administrative and judicial proceedings, which shall allow public authorities and individuals to bring timely actions against violations of the environmental law; and provide for remedies, including interim measures, which shall ensure that sanctions are effective, proportionate and dissuasive and have a real and deterrent effect.

2. Each Party shall establish a system for the effective monitoring of the domestic enforcement of their law and practices referred to in Article LPFS.2.30 [Non-regression of the level of protection] and Article LPFS.2.31 [Future levels of protection] and of that Party's obligations pursuant to Article LPFS.2.30 [Non-regression of the level of protection] and, where applicable, to Article LPFS.2.31(2) [Future levels of protection], by an independent and adequately resourced body or bodies ("the independent body").

The independent body shall have powers to conduct inquiries on its own initiative concerning alleged breaches by public bodies and authorities, and to receive complaints for the purposes of conducting such inquiries. It shall have all powers necessary to carry out its functions, including the power to request information. The independent body shall have the right to bring a legal action before a competent court or tribunal in an appropriate judicial procedure, with a view to seeking an adequate remedy.

Given the powers of the European Commission under the Treaties, the Union is deemed to comply with this Article.

#### Article LPFS.2.33: Cooperation on monitoring and enforcement

The Parties shall ensure that the independent body referred to in Article LPFS.2.32(2) [Monitoring and enforcement] and the European Commission regularly meet and co-operate on the effective monitoring and enforcement of the law and practices referred to in Article LPFS.2.30 [Non-regression of the level of protection] and in Article LPFS.2.31(2) [Future levels of protection].

### *Section 7: Fight against climate change*

#### Article LPFS.2.34: Climate neutrality and non-regression of the level of climate protection

1. Each Party reaffirms its objective of achieving economy-wide climate neutrality by 2050.
2. A Party shall not adopt or maintain any measure that weakens or reduces the level of climate protection provided by the Party's law and practices, and by the enforcement thereof, below the level provided by the common commitments and targets applicable in the Union and the United Kingdom at the end of the transition period, and by their enforcement.
3. For the purpose of this Section, common commitments and targets applicable in the Union and the United Kingdom at the end of the transition period shall also include those commitments and targets whose attainment is envisaged for a date that is subsequent to the end of the transition period.
4. For the purpose of this Section, and without prejudice to Article LPFS.2.36(3)(b) [Future levels of protection], climate protection covers emissions and, where applicable, removals of

greenhouse gases and ozone depleting substances. This includes emissions and removals from, in particular, industrial installations, transport, land use and forestry, and agriculture.

#### Article LPFS.2.35: Carbon pricing

1. The United Kingdom shall implement a system of carbon pricing of at least the same scope and effectiveness as that provided by the EU Emissions Trading System (EU ETS).
2. Should the United Kingdom create its own emissions trading system and request it to be linked to the EU ETS, the Union shall give serious consideration to such request, provided that it does not risk affecting the integrity of the EU ETS, in particular its balance of rights and obligations, and that an increase in scope and effectiveness is ensured.

#### Article LPFS.2.36: Future levels of protection

1. Each Party shall seek to increase in its relevant law and practices and through the enforcement thereof, the level of climate protection above the level of protection referred to in Article LPFS.2.34 [Climate neutrality and non-regression of the level of climate protection] as well as the scope and effectiveness of their system of carbon pricing referred to in Article LPFS.2.35 [Carbon pricing].
2. Where both Parties have increased, through their relevant law and practices and through the enforcement thereof, the level of climate protection above the level referred to in Article LPFS.2.34 [Climate neutrality and non-regression of the level of climate protection] neither Party shall weaken or reduce its level of climate protection below a level of protection which is at least equivalent to that of the other Party's increased level of climate protection.

Where both Parties have increased, through their relevant law and practices and through the enforcement thereof, the scope and effectiveness of their system of carbon pricing above the level referred to in Article LPFS.2.35 [Carbon pricing] neither Party shall weaken or reduce the scope and effectiveness of its system of carbon pricing below the scope and effectiveness which is at least equivalent to that of the other Party's increased scope and effectiveness.

3. The Partnership Council may:
  - (a) lay down commitments or targets providing for a higher level of climate protection than that referred to in Article LPFS.2.34 [Climate neutrality and non-regression of the level of climate protection] and an increased scope and effectiveness of the Parties' systems of carbon pricing in Article LPFS.2.35 [Carbon pricing];
  - (b) include additional areas in the concept of climate protection referred to in Article LPFS.2.34(4) [Climate neutrality and non-regression of the level of climate protection].

#### Article LPFS.2.37: Monitoring and enforcement

1. For the purpose of enforcement as referred to in Article LPFS.2.34 [Climate neutrality and non-regression of the level of climate protection] and in Article LPFS.2.36 [Future levels of protection], each Party shall establish administrative and judicial proceedings, which shall allow timely actions to be brought against violations of climate law; and provide for remedies, including interim measures, which shall ensure that sanctions are effective, proportionate and dissuasive and have a real and deterrent effect.
2. Each Party shall establish a system for the effective monitoring of the domestic enforcement of their law and practices referred to in Article LPFS.2.34 [Climate neutrality and non-regression of

the level of climate protection], in Article LPFS.2.35 [Carbon pricing] and in Article LPFS.2.36 [Future levels of protection] and of their obligations pursuant to Article LPFS.2.34 [Climate neutrality and non-regression of the level of climate protection] and to Article LPFS.2.35 [Carbon pricing] and, where applicable, to Article LPFS.2.36 [Future levels of protection], by an independent and adequately resourced body or bodies ("the independent body").

The independent body shall have powers to conduct inquiries on its own initiative concerning alleged breaches by public bodies and authorities, and to receive complaints for the purposes of conducting such inquiries. It shall have all powers necessary to carry out its functions, including the power to request information. The independent body shall have the right to bring a legal action before a competent court or tribunal in an appropriate judicial procedure, with a view to seeking an adequate remedy.

Given the powers of the European Commission under the Treaties, the Union is deemed to comply with this Article.

#### Article LPFS.2.38: Cooperation on monitoring and enforcement

The Parties shall ensure that the independent body referred to in Article LPFS.2.37(2) [Monitoring and enforcement] and the European Commission regularly meet and co-operate on the effective monitoring and enforcement of the law and practices referred to in Article LPFS.2.34 [Climate neutrality and non-regression of the level of climate protection] and in Article LPFS.2.35 [Carbon pricing] and, where applicable, in Article LPFS.2.36(2) [Future levels of protection].

### *Section 8: Other instruments for trade and sustainable development*

#### Article LPFS.2.39: Objectives

1. The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development adopted by the United Nations (UN) Conference on Environment and Development in 1992, the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002, the International Labour Organisation (ILO) Declaration on Social Justice for a Fair Globalisation of 2008, the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled "The Future We Want" endorsed by the UN General Assembly Resolution 66/288 adopted on 27 July 2012 and the UN 2030 Agenda for Sustainable Development, adopted by the UN General Assembly Resolution 70/1 on 25 September 2015 and its Sustainable Development Goals.

2. In light of the above, the objective of this Section is to enhance the integration of sustainable development, notably its labour and environmental dimensions, in the Parties' trade and investment relationship and in this respect to complement the commitments of the Parties under Section 5 [Labour and social protection], Section 6 [Environmental protection] and Section 7 [Fight against climate change].

#### Article LPFS.2.40: Multilateral labour and social protection standards and agreements

1. The Parties affirm their commitment to promote the development of international trade in a way that is conducive to decent work for all, as expressed in the ILO Declaration on Social Justice for a Fair Globalization of 2008 and to the Council of Europe European Social Charter.

2. In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, each Party shall respect, promote and effectively implement the internationally recognised core labour standards, as defined in the fundamental ILO Conventions, which are:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

3. Each Party shall make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so.

4. The Parties shall regularly exchange information on the respective situations and advances of the Member States and of the United Kingdom with regard to the ratification of ILO Conventions or protocols classified as up-to-date by the ILO and of the revised European Social Charter and related Protocols.

5. Each Party shall effectively implement the ILO Conventions that the United Kingdom and the Member States of the European Union have respectively ratified and the provisions of the European Social Charter that the Member States of the European Union and the United Kingdom have respectively accepted.

6. Each Party shall promote through its laws and practices the ILO Decent Work Agenda as set out in the Declaration on Social Justice for a Fair Globalization of 2008 adopted by the International Labour Conference at its 97th Session and in accordance with relevant ILO conventions, in particular with regard to:

- (a) decent working conditions for all, with regard to, inter alia, wages and earnings, working hours, other conditions of work and social protection;
- (b) non-discrimination in respect of working conditions.

7. Each Party shall protect and promote social dialogue on labour matters among workers and employers, and their respective organisations, and with relevant government authorities.

8. The Parties shall work together to strengthen their cooperation on trade-related aspects of labour policies and measures, bilaterally, regionally and in international fora, as appropriate, including in the ILO. Such cooperation may cover inter alia:

- (a) trade-related aspects of implementation of fundamental, priority and other up-to-date ILO Conventions;
- (b) trade-related aspects of the ILO Decent Work Agenda, including on the interlinkages between trade and full and productive employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue and gender equality; and
- (c) the impact of labour law and standards on trade and investment; or the impact of trade and investment law on labour.

#### Article LPFS.2.41: Multilateral environmental governance and agreements

1. The Parties recognise the importance of the UN Environment Assembly (UNEA) of the UN Environment Programme (UNEP) and multilateral environmental governance and agreements as a

response of the international community to global, regional or local environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment policies.

2. In light of paragraph 1, each Party shall effectively implement the multilateral environmental agreements (MEAs), protocols and amendments that it has ratified in its law and practices.

3. The Parties shall regularly exchange information on their respective situations as regards the ratification of multilateral environmental agreements, including their protocols and amendments.

4. The Parties reaffirm the right of each Party to adopt or maintain measures to further the objectives of multilateral environmental agreements to which it is a party. The Parties recall that measures adopted or enforced to implement such MEAs may be justified under Article EXC.1 [General exceptions] of Title XVI [Exceptions].

5. The Parties shall work together to strengthen their cooperation on trade-related aspects of environmental policies and measures, bilaterally, regionally and in international fora, as appropriate, including in the UN High-level Political Forum for Sustainable Development, UN Environment, UNEA, multilateral environmental agreements, the International Civil Aviation Organization (ICAO) or the WTO. Such cooperation may cover *inter alia*:

- (a) initiatives on sustainable production and consumption, including those aimed at promoting a circular economy and green growth and pollution abatement;
- (b) initiatives to promote environmental goods and services, including by addressing related tariff and non-tariff barriers;
- (c) the impact of environmental law and standards on trade and investment; or the impact of trade and investment law on the environment;
- (d) the implementation of Annex 16 to the Chicago Convention and other measures to reduce the environmental impact of aviation, including in the area of air traffic management; and
- (e) other trade related aspects of multilateral environmental agreements, including implementation.

#### Article LPFS.2.42: Trade and climate change

1. The Parties recognise the importance of taking urgent action to combat climate change and its impacts, and the role of trade and investment in pursuing this objective, consistent with the United Nations Framework Convention on Climate Change), the purpose and goals of the Paris Agreement adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change at its 21st session, and with other MEAs and multilateral instruments in the area of climate change.

2. In light of paragraph 1, and the provisions of referred to in Article LPFS.2.34 [Climate neutrality and non-regression of the level of climate protection] each Party shall:

- (a) effectively implement the United Nations Framework Conventions on Climate Change, and the Paris Agreement of 2015 adopted thereunder;
- (b) promote the mutual supportiveness of trade and climate policies and measures thereby contributing to the transition to a low greenhouse gas emission, resource efficient economy and to climate-resilient development;

(c) facilitate the removal of obstacles to trade and investment in goods and services of particular relevance for climate change mitigation and adaptation, such as renewable energy, energy efficient products and services, for instance through addressing tariff and non-tariff barriers or through the adoption of policy frameworks conducive to the deployment of best available technologies.

3. The Parties shall work together to strengthen their cooperation on trade-related aspects of climate change policies and measures bilaterally, regionally and in international fora, as appropriate, including in the UNFCCC, the WTO, the Montreal Protocol on Substances that Deplete the Ozone Layer, the International Maritime Organisation (IMO) and the International Civil Aviation organization (ICAO). Such cooperation may cover *inter alia*:

- (a) policy dialogue and cooperation regarding the implementation of the Paris Agreement, such as on means to promote climate resilience, renewable energy, low-carbon technologies, energy efficiency, sustainable transport, sustainable and climate-resilient infrastructure development, emissions monitoring, international carbon markets;
- (b) supporting the development and adoption of ambitious and effective greenhouse gas emissions reduction measures by the IMO to be implemented by ships engaged in international trade;
- (c) supporting the development and adoption of ambitious and effective greenhouse gas emissions reduction measures by the ICAO;
- (d) supporting an ambitious phase-out of ozone depleting substances (ODS) and phase-down of hydrofluorocarbons (HFCs) under the Montreal Protocol on Substances that Deplete the Ozone Layer through measures to control their production, consumption and trade; the introduction of environmentally friendly alternatives to them; the updating of safety and other relevant standards as well as by combating the illegal trade of substances regulated by the Montreal Protocol.

#### Article LPFS.2.43: Trade and biological diversity

1. The Parties recognise the importance of conserving and sustainably using biological diversity and the role of trade in pursuing these objectives, consistent with the Convention on Biological Diversity (CBD) and its protocols, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), other relevant multilateral environmental agreements to which they are a party, and the decisions adopted thereunder.

2. In light of paragraph 1, each Party shall:

- (a) implement effective measures to combat illegal wildlife trade, including with respect to third countries as appropriate;
- (b) promote the long-term conservation and sustainable use of CITES listed species and the inclusion of animal and plant species in the Appendices to the CITES where the conservation status of that species is considered at risk because of international trade; and conduct periodic reviews, which may result in a recommendation to amend the Appendices to the CITES, in order to ensure that they properly reflect the conservation needs of species subject to international trade;
- (c) promote trade in products derived from a sustainable use of biological resources and contributing to the conservation of biodiversity; and
- (d) take measures to conserve biological diversity when it is subject to pressures linked to trade and investment, in particular through measures to prevent the spread of invasive alien species.



3. The Parties shall work together to strengthen their cooperation on trade-related aspects of biodiversity policies and measures bilaterally, regionally and in international fora, as appropriate, including in the CBD and CITES. Such cooperation may cover inter alia:

- (a) initiatives and good practices concerning trade in natural resource-based products with the aim of conserving biological diversity;
- (b) trade and the conservation and sustainable use of biological diversity, the valuation of ecosystems and their services and related economic instruments;
- (c) tackling illegal wildlife trade, including through initiatives to reduce demand for illegal wildlife products and initiatives to enhance information sharing and cooperation; and
- (d) access to genetic resources; and the fair and equitable sharing of benefits from their utilisation consistent with the Nagoya Protocol of the CBD.

#### Article LPFS.2.44: Trade and forests

1. The Parties recognise the importance of sustainable forest management and the role of trade in pursuing this objective.

2. In light of paragraph 1, each Party shall:

- (a) implement measures to combat illegal logging and related trade, including with respect to third countries as appropriate; and promote trade in legally harvested forest products;
- (b) promote the conservation and sustainable management of forests and trade and consumption of timber and timber products harvested in accordance with the law of the country of harvest and from sustainably managed forests; and
- (c) exchange information with the other Party on trade-related initiatives on sustainable forest management, forest governance and on the conservation of forest cover and cooperate to maximise the impact and mutual supportiveness of their respective policies of mutual interest.

3. The Parties shall work together to strengthen their cooperation on trade-related aspects of sustainable forest management, the conservation of forest cover and illegal logging bilaterally, regionally and in international fora as appropriate.

#### Article LPFS.2.45: Trade and sustainable management of marine biological resources and aquaculture

1. The Parties recognise the importance of conserving and sustainably managing marine biological resources and marine ecosystems as well as of promoting responsible and sustainable aquaculture, and the role of trade in pursuing these objectives.

2. The Parties acknowledge that illegal, unreported and unregulated (IUU) fishing threatens fish stocks, the livelihoods of persons engaged in responsible fishing practices and the sustainability of trade in fishery products and confirm the need for action to end IUU fishing in order to address the problems of overfishing and unsustainable utilisation of fisheries resources.

3. In light of paragraphs 1 and 2, each Party shall:

- (a) implement long-term conservation and management measures and sustainable use of marine living resources as defined in the main UN and FAO instruments relating to these issues;

- (b) act consistent with the principles of the UN Convention on the Law of the Sea, the UN Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the FAO Code of Conduct for Responsible Fisheries and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) fishing, and participate in FAO's initiative on the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels;
- (c) participate actively in the work of the Regional Fisheries Management Organisations (RFMOs) to which they are members, observers, or cooperating non-contracting parties, with the aim of achieving good fisheries governance and sustainable fisheries, such as through the promotion of scientific research and the adoption of conservation measures based on best available science, the strengthening of compliance mechanisms, the undertaking of periodical performance reviews and the adoption of effective control, monitoring and enforcement of the RFMOs' management measures and, where applicable, the adoption and implementation of Catch Documentation or Certification Schemes and port state measures;
- (d) implement effective measures to combat IUU fishing, including measures to exclude IUU products from trade flows, and cooperate to this end, including by facilitating the exchange of information; and
- (e) promote the development of sustainable and responsible aquaculture, taking into account its economic, social and environmental aspects, including with regard to the implementation of the objectives and principles contained in the FAO Code of Conduct for Responsible Fisheries.

4. The Parties shall work together to strengthen their cooperation on conservation and trade-related aspects of fishery and aquaculture policies and measures, bilaterally regionally and in international fora, as appropriate, including in the WTO, RFMOs and other multilateral instruments in this field with the aim of promoting sustainable fishing and aquaculture practices and trade in fish products from sustainably managed fisheries and aquaculture operations.

#### Article LPFS.2.46: Trade and investment favouring sustainable development

1. The Parties confirm their commitment to enhance the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions.
2. Pursuant to paragraph 1, the Parties shall promote:
  - (a) trade and investment policies that support the objectives of the Decent Work Agenda, consistent with the 2008 ILO Declaration on Social Justice for a Fair Globalisation, including the minimum living wage, inclusive social protection, health and safety at work, and other aspects related to working conditions;
  - (b) trade and investment in environmental goods and services, such as renewable energy and energy efficient products and services, including through addressing related non-tariff barriers or through the adoption of policy frameworks conducive to the deployment of best available technologies;
  - (c) trade in goods that contribute to enhanced social conditions and environmentally sound practices, including goods that are the subject of voluntary sustainability assurance schemes such as fair and ethical trade schemes and eco-labels;
  - (d) cooperate bilaterally, regionally and in international fora on issues in this Article.

#### Article LPFS.2.47: Trade and responsible supply chain management

1. The Parties recognise the importance of responsible management of supply chains through responsible business conduct / corporate social responsibility practices and the role of trade in pursuing this objective.
2. In light of paragraph 1, each Party shall:
  - (a) promote corporate social responsibility / responsible business conduct, including by providing supportive policy frameworks that encourage the uptake of relevant practices by businesses; and
  - (b) support the adherence, implementation, follow-up and dissemination of relevant international instruments, such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact, and the UN Guiding Principles on Business and Human Rights.
3. The Parties recognise the utility of international sector-specific guidelines in the area of corporate social responsibility / responsible business conduct and shall promote joint work in this regard. In respect of the OECD Due Diligence Guidance for responsible supply chains of minerals from conflict-affected and high-risk areas and its supplements, the Parties shall also implement measures to promote the uptake of this Guidance.
4. The Parties shall work together to strengthen their cooperation on trade-related aspects of issues covered by this article bilaterally, regionally and in international fora as appropriate, inter alia through the exchange of information, best practices and outreach initiatives.

#### Article LPFS.2.48: Scientific and technical information

When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall take into account available scientific and technical information, relevant international standards, guidelines or recommendations.

#### Article LPFS 2.49: Transparency

With a view to ensuring awareness and providing reasonable opportunities for interested persons and stakeholders to submit views, each Party shall, in accordance with Title I [Transparency], develop, enact and implement in a transparent manner:

- (a) measures aimed at protecting the environment and labour conditions that may affect trade or investment; and
- (b) trade or investment measures that may affect the protection of the environment or labour conditions.

#### Article LPFS.2.50: Dispute resolution

1. The Parties shall make all efforts through dialogue, consultation, exchange of information and cooperation to address any disagreement on the application of this Section.
2. By way of derogation from Title II of Part Five [Dispute settlement], in case of a disagreement between the Parties regarding the application of this Section, the Parties shall have recourse exclusively to the dispute resolution procedures established under Article LPFS.2.51 [Consultations] and Article LPFS.2.52 [Panel of experts].

#### Article LPFS.2.51: Consultations

1. A Party may request consultations with the other Party regarding the application of this Section by delivering a written request to the other Party. The request shall set out the reasons for requesting consultations, including a description of the matter at issue and its relation to the provisions of this Section. Consultations shall start promptly after a Party delivers a request for consultations, and in any event not later than 30 days of the date of receipt of the request, unless the Parties agree to a longer period.
2. The Parties shall enter into consultations with the aim of reaching a mutually satisfactory resolution of the matter. In matters related to the multilateral agreements or instruments referred to in this Section, the Parties shall take into account information from the ILO or relevant bodies or organisations established under multilateral environmental agreements in order to promote coherence between the work of the Parties and these organisations. Where relevant, the Parties shall seek advice from such organisations or their bodies, or any other expert or body they deem appropriate.
3. Each Party may seek, when appropriate, the views of the domestic advisory group referred to in Article INST.7 [Domestic advisory groups] of Title I [Institutional framework] of Part Five [Institutional and horizontal provisions] or other expert advice.
4. Any resolution reached by the Parties shall be made available to the public.

#### Article LPFS.2.52: Panel of experts

1. If, within 90 days of a request for consultations under Article LPFS.2.51 [Consultations], no mutually satisfactory resolution of the matter has been reached, a Party may request the establishment of a panel of experts to examine the matter. The request shall set out the reasons for requesting the establishment of a panel of experts, including a description of the matter at issue and indication of the relevant provision(s) of this Section that it considers applicable.
2. The Specialised Committee on the Level Playing Field and Sustainability shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and able to serve as panellists on the panel of experts. The list shall be composed of three sub-lists: one sub-list for each Party and one sub-list of individuals that are not nationals of either Party. Each Party shall propose at least five individuals for its sub-list. The Parties shall also select at least five individuals for the sub-list of individuals that are not nationals of either Party. The chairperson of a panel of experts shall be selected from the latter list. The Specialised Committee on the Level Playing Field and Sustainability shall ensure that the list is kept up to date and that the number of experts is maintained at least at 15 individuals.
3. The individuals referred to in paragraph 2 shall have specialised knowledge of or expertise in labour or environmental law, issues addressed in this Section, or the resolution of disputes arising under international agreements and shall act independently.
4. Unless the Parties agree otherwise within five days from the date of establishment of the panel of experts, the terms of reference shall be:

*"to examine, in the light of the relevant provisions of the Other instruments for trade and sustainable development Section of [...] Agreement, the matter referred to in the request for the establishment of the panel of experts, and to issue a report, in accordance with Article LPFS.2.52 [Panel of experts] of Title III [Level playing field and sustainability] with its findings and recommendations for the resolution of the matter".*

5. With regard to matters related to compliance with multilateral agreements and instruments referred to in this Section the opinions of external experts or information requested by the panel of experts should include information and advice from the ILO or relevant bodies or organisations established under the multilateral environmental agreements. The panel of experts shall forward such opinions, information or advice to each Party allowing them to submit their comments within 20 days of its receipt.
6. The reports of panel of experts shall set out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations. The Parties shall make the final report of the panel of experts available to the public within 15 days of its submission by the panel of experts.
7. The Parties shall discuss appropriate measures to be implemented taking into account the report and recommendations of the panel of experts. The Party complained against shall inform its domestic advisory group established under Article INST.7 [Domestic advisory groups] of Title I [Institutional framework] of Part Five [Institutional and horizontal provisions] of this Agreement and the other Party of its decisions on any actions or measures to be implemented no later than three months after the report has been issued to the Parties.
9. The Specialised Committee on the Level Playing Field and Sustainability shall monitor the follow-up to the report of the panel of experts and its recommendations. The domestic advisory group set up under Article INST.7 of Title I of Part Five [Institutional provisions] may submit observations to the Specialised Committee on the Level Playing Field and Sustainability in this regard.
10. Except as otherwise provided for in this Article, the provisions set out in Article INST.15 [Arbitration procedure], Article INST.28 [Lists of Arbitrators], Article INST.30 [Arbitration tribunal decisions and rulings], Article INST.18 [Compliance measures], Article INST.23 [Reasonable period of time], Article INST.20 [Compliance review], Article INST.29 [Rules of procedure], Article INST.31 [Suspension and termination], Article INST.32 [Mutually agreed solution], Article INST.33 [Time periods], Article INST.34 [Costs], as well as ANNEX INST-3 [Rules of Procedure] and ANNEX INST-4 [Code of Conduct] to Title II [Dispute settlement] of Part Five [Institutional and horizontal provisions], shall apply *mutatis mutandis*.

## TITLE IV: TRADE IN GOODS

### Chapter one: National Treatment and market access for goods [including trade remedies]

#### Article GOODS.1: Objective

The objective of this Chapter is to establish a free trade area in trade in goods.

#### Article GOODS.2: Scope

Except as otherwise provided, this Chapter applies to trade in goods between the Parties.

#### Article GOODS.3: Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) “consular transactions” means the procedure of obtaining from a consul of the importing Party in the territory of the exporting Party, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shipper's export declaration or any other customs documentation in connection with the importation of the good;
- (b) “Customs Valuation Agreement” means the Agreement on Implementation of Article VII of GATT 1994 contained in Annex 1A to the WTO Agreement;
- (c) “customs duty” means any duty or charge of any kind imposed on or in connection with the importation of a good and it does not include any:
  - (i) charge equivalent to an internal tax imposed consistently with Article GOODS.4 [National treatment on internal taxation and regulation];
  - (ii) anti-dumping, special safeguard, countervailing or safeguard duty applied consistently with GATT 1994, the Anti-dumping Agreement, the Agreement on Agriculture, the Agreement on Subsidies and Countervailing Measures or the Agreement on Safeguards, as appropriate; and
  - (iii) fee or other charge imposed on or in connection with importation that is limited in amount to the approximate cost of the services rendered;
- (d) “good of a Party” means a domestic good as this is understood in GATT 1994, and includes originating goods;
- (e) “Harmonised System” means the Harmonised Commodity Description and Coding System, including all legal notes and amendments thereto developed by the World Customs Organization (the “HS”);
- (f) “Import Licensing Procedure” means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance purposes, to the relevant administrative body or bodies as a prior condition for importation into the territory of the importing Party;
- (g) “Export Licensing Procedure” means an administrative procedure requiring the submission of an application or other documentation, other than that generally required for customs clearance

purposes, to the relevant administrative body or bodies as a prior condition for exportation from the territory of the exporting Party;

- (h) "Repair" means any processing operation undertaken on a good to remedy operating defects or material damage and entailing the re-establishment of the good to its original function or to ensure compliance with technical requirements for its use, without which the good could no longer be used in the normal way for the purposes for which it was intended. Repair of goods includes restoration and maintenance but does not include an operation or process that:
- (i) destroys the essential characteristics of a good, or creates a new or commercially different good;
  - (ii) transforms an unfinished good into a finished good; or
  - (iii) is used to improve or upgrade the technical performance of goods;
- (i) "Remanufactured good" means a good classified in HS Chapters 84 to 90 or 9402 that:
- (i) is entirely or partially comprised of parts obtained from goods that have been used beforehand;
  - (ii) has similar performance and working conditions compared to the equivalent good in new condition; and
  - (iii) is given the same warranty as the equivalent good in new condition;
- (j) "Originating good" means a good qualifying under the rules of origin set out in Chapter Two of this Title [Rules of origin]

#### Article GOODS.4: National treatment on internal taxation and regulation

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its Notes and Supplementary Provisions. To this end, Article III of the GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.

#### Article GOODS.4a: Freedom of transit

Each Party shall accord freedom of transit through its territory, via the routes most convenient for international transit, for traffic in transit to or from the territory of the other Party or of any other third country. To this end, Article V of GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that Article V of GATT 1994 includes the movement of energy goods *inter alia* via pipelines or electricity grids.

#### Article GOODS.5: Prohibition of customs duties

Except as otherwise provided for in this Agreement, customs duties on goods originating in the other Party shall be prohibited.

#### Article GOODS.6: Export duties, taxes or other charges

1. A Party shall not introduce or maintain any duty, tax or other charge of any kind imposed on, or in connection with, the exportation of a good to the other Party; or any internal tax or other

charge on a good exported to the other Party that is in excess of the tax or charge that would be imposed on like goods when destined for domestic consumption.

2. Nothing in this Article shall prevent a Party from imposing on the exportation of a good a fee or charge that is permitted under Article GOODS.7 [Fees and formalities].

#### Article GOODS.7: Fees and formalities

1. Fees and other charges imposed by a Party on or in connection with importation or exportation of a good of the other Party shall be limited in amount to the approximate cost of services rendered, and shall not represent an indirect protection to domestic goods or taxation of imports or exports for fiscal purposes. A Party shall not levy fees or other charges on or in connection with importation or exportation on an *ad valorem* basis.

2. Each Party may impose charges or recover costs only where specific services are rendered, in particular the following:

- (a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;
- (b) analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions relating to binding information or the provision of information concerning the application of the customs laws and regulations;
- (c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved;
- (d) exceptional control measures, if these are necessary due to the nature of the goods or to a potential risk.

3. Each Party shall promptly publish, via an official website, all fees and charges it imposes in connection with importation or exportation in such a manner as to enable governments, traders and other interested parties, to become acquainted with them. This information shall include the reason for the fee or charge for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made; and new or amended fees and charges shall not be imposed until information in accordance with the preceding paragraph is published and made readily available.

4. A Party shall not require consular transactions, including related fees and charges, in connection with the importation of any good of the other Party.

#### Article GOODS.8: Repaired goods

1. A Party shall not apply a customs duty to a good, regardless of its origin, that re-enters the Party's customs territory after that good has been temporarily exported from its customs territory to the customs territory of the other Party for repair.

2. Paragraph 1 does not apply to a good imported in bond, into free trade zones, or in similar status, that is then exported for repair and is not re-imported in bond, into free trade zones, or in similar status.

3. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the customs territory of the other Party for repair.



#### Article GOODS.9: Remanufactured goods

1. A Party shall not accord to remanufactured goods of the other Party a treatment that is less favourable than that it accords to equivalent goods in new condition.
2. Article GOODS.10 [Import and export restrictions] applies to import and export prohibitions or restrictions on remanufactured goods. If a Party adopts or maintains import and export prohibitions or restrictions to used goods, it shall not apply those measures to remanufactured goods.
3. A Party may require that remanufactured goods be identified as such for distribution or sale in its territory and that they meet all applicable technical requirements that apply to equivalent goods in new condition.

#### Article GOODS.10: Import and export restrictions

1. A Party shall not adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of GATT 1994, including its Notes and Supplementary Provisions. To this end, Article XI of the GATT 1994 and its Notes and Supplementary Provisions are incorporated into and made part of this Agreement, *mutatis mutandis*.
2. A Party shall not adopt or maintain:
  - (a) export and import price requirements, except as permitted in enforcement of countervailing and antidumping duty orders and undertakings;
  - (b) import licensing conditioned on the fulfilment of a performance requirement within the meaning of Article SERVIN 2.6 [Performance Requirements].

#### Article GOODS.11: Import and export monopolies

A Party shall not designate or maintain an import or export monopoly. For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import a good from, or export a good to, the other Party.

#### Article GOODS.12: Origin marking

1. Where the United Kingdom requires a mark of origin on the importation of goods of the Union, the United Kingdom shall accept the origin mark "Made in the EU" under conditions that are no less favourable than those applied to marks of origin of Member States of the Union.
2. For the purposes of the origin mark "Made in the EU", the United Kingdom shall treat the Union as a single territory.

#### Article GOODS.13: Import licensing procedures

1. Each Party shall ensure that all import licensing procedures applicable to trade in goods between the Parties are neutral in application, and administered in a fair, equitable, non-discriminatory and transparent manner.
2. A Party shall only adopt or maintain licensing procedures as a condition for importation into its territory from the territory of the other Party, if other appropriate procedures to achieve an administrative purpose are not reasonably available.

3. A Party shall not adopt or maintain any non-automatic import licensing procedure, unless it is necessary to implement a measure that is consistent with this Agreement. A Party adopting such non-automatic import licensing procedure shall indicate clearly the measure being implemented through it.

4. Each Party shall introduce and administer any import licensing procedure in accordance with Articles 1 to 3 of the WTO Import Licensing Agreement (hereinafter referred to as "the Import Licensing Agreement"). To that end, Articles 1 to 3 of the Import Licensing Agreement are incorporated into and made part of this Agreement *mutatis mutandis*.

5. Any Party introducing or modifying any import licensing procedure shall make all relevant information available on an official website online. This information shall be made available, whenever practicable, twenty one days prior to the date of the application of the new or modified licensing procedure and in any event no later than such date. The information available online shall contain the data required under Article 5 of the Import Licensing Agreement.

6. Upon request of the other Party, a Party shall promptly provide any relevant information regarding any import licensing procedures that it intends to adopt or maintains, including the information referred to in Articles 1 to 3 of the Import Licensing Agreement.

#### Article GOODS.14: Export licensing procedures

1. Each Party shall publish any new export licensing procedure, or any modification to an existing export licensing procedure, in such a manner as to enable governments, traders and other interested parties to become acquainted with them. Such publication shall take place, whenever practicable, [45] days before the procedure or modification takes effect, and in all events no later than the date such procedure or modification takes effect.

2. The publication of export licensing procedures shall include the following information:

- (a) the texts of its export licensing procedures, or of any modifications it makes to those procedures;
- (b) the goods subject to each licensing procedure;
- (c) for each procedure, a description of the process for applying for a license and any criteria an applicant must meet to be eligible to apply for a license, such as possessing an activity license, establishing or maintaining an investment, or operating through a particular form of establishment in a Party's territory;
- (d) a contact point or points from which interested persons can obtain further information on the conditions for obtaining an export license;
- (e) the administrative body or bodies to which an application or other relevant documentation should be submitted;
- (f) a description of any measure or measures that the export licensing procedure is designed to implement;
- (g) the period during which each export licensing procedure will be in effect, unless the procedure will remain in effect until withdrawn or revised in a new publication;
- (h) if the Party intends to use a licensing procedure to administer an export quota, the overall quantity and, if applicable, the value of the quota and the opening and closing dates of the quota; and

(i) any exemptions or exceptions that replace the requirement to obtain an export license, how to request or use those exemptions or exceptions, and the criteria for granting them.

3. Within [30] days after the date of entry into force of this Agreement, each Party shall notify the other Party of its existing export licensing procedures. A Party that introduces new export licensing procedures, or modifies existing licensing procedures, shall notify the other Party of such introduction or modification within [60] days of publication. The notification shall include the reference to the source or sources where the information required in paragraph 2 is published and include, where appropriate, the address of the relevant government online website or websites.

4. Nothing in this Article requires a Party to grant an export license, or prevents a Party from implementing its commitments under United Nations Security Council Resolutions, as well as under multilateral non-proliferation regimes and export control arrangements including the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the Australia Group, the Nuclear Suppliers Group, and the Missile Technology Control Regime.

#### Article GOODS.15: Customs valuation

Each Party shall determine the customs value of goods of the other Party imported into its territory in accordance with Article VII of GATT 1994 and the Customs Valuation Agreement. To this end, Article VII of GATT 1994 [including its Notes and Supplementary Provisions], and Articles 1 to 17 of the Customs Valuation Agreement [including its Interpretative Notes] are incorporated into and made part of this Agreement, *mutatis mutandis*.

#### Article GOODS.16: Preference utilisation

1. For the purpose of monitoring the functioning of this Title and calculating preference utilisation rates, the Parties shall annually exchange import statistics for a 10 year-long period starting one year after the date of entry into force of this Agreement. Unless the Partnership Council decides otherwise, this period shall be automatically extended for five years, and thereafter that Partnership Council may decide to extend it further.

2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Title as well as for those that receive non-preferential treatment.

#### Article GOODS.17: Trade remedies

1. The Parties affirm their rights and obligations under Article VI of GATT 1994, the WTO Anti-Dumping Agreement, the WTO Agreement on Subsidies and Countervailing Measures, WTO Article XIX of GATT 1994, the WTO Agreement on Safeguards and Article 5 of the Agreement on Agriculture.

2. Chapter three of Title IV of Part Two [Rules of origin] does not apply to anti-dumping, countervailing and safeguard investigations and measures.

3. Title II of Part Five [Dispute settlement] does not apply to this Article.

4. Without prejudice to paragraph 1, the Parties recognise that domestic support measures within the meaning of Annex 2 of the WTO Agreement on Agriculture ("green box" payments) have no price-distorting effects and are not specific to an enterprise or industry or group of enterprises or industries.

5. Such domestic support measures shall neither be countervailed between the Parties in anti-subsidy proceedings nor be subjected to price or cost adjustments in antidumping investigations.

#### Article GOODS.18: Use of existing WTO tariff rate quotas

1. Products originating in one Party shall not be eligible to be imported into the other Party under existing WTO TRQs as defined in paragraph 2. This shall include those TRQs as being apportioned between the Parties pursuant to Article XXVIII GATT negotiations initiated by the EU in WTO document G/SECRET/42/Add.2 and by the UK in WTO document G/SECRET/44 and as set out in each Party's respective internal legislation.

2. For the purposes of paragraph 1, "existing WTO TRQs" shall mean those tariff rate quotas which are WTO concessions of the EU included in the draft EU28 schedule of concessions and commitments under the WTO General Agreement on Tariffs and Trade of 1994 submitted to the WTO in document G/MA/TAR/RS/506 as amended by documents G/MA/TAR/RS/506/Add.1 and G/MA/TAR/RS/506/Add.2.

#### Article GOODS.19: Measures in case of breaches or circumvention of customs legislation

1. The Parties shall co-operate in preventing, detecting and combating breaches or circumvention of customs legislation as defined by Article 1(a) of the Protocol on Mutual Administrative Assistance in Customs Matters, in accordance with their obligations under Chapter three of Title IV [Rules of origin]. The Parties shall take all requisite measures to protect both Parties' financial interests regarding the levying of duties on goods entering the customs territories of the United Kingdom or the European Union.

2. A Party may in accordance with the procedure laid down in paragraph 3, temporarily suspend the relevant preferential treatment of the product(s) concerned when:

- (a) a Party has made a finding, based on objective information, that breaches or circumvention of customs legislation have been committed, and;
- (b) the other Party repeatedly refuses or otherwise fails to comply with its obligations referred to in paragraph 1.

3. The Party which has made a finding referred to in paragraph 2 shall, without undue delay, notify the Partnership Council and enter into consultations with the other Party within the Partnership Council with a view to reaching a solution that is acceptable to both Parties.

If the Parties fail to agree on a mutually acceptable solution within three months after the date of notification, the Party which has made the finding may decide to suspend temporarily the relevant preferential treatment of the product(s) concerned. In this case, the Party which made the finding shall notify the temporary suspension to the Partnership Council without delay.

The temporary suspensions shall apply only for a period necessary to protect the financial interests of the Party concerned, and not for longer than six months. Where the conditions that gave rise to the initial suspension persist at the expiry of the six month period, the Party concerned may decide to renew the suspension. Any suspension shall be subject to periodic consultations within the Partnership Council.

4. Each Party shall publish, in accordance with its internal procedures, notices to importers about any notification and decision concerning temporary suspensions referred to in paragraph 3.

## Article GOODS.20: Errors, maladministration and abuses by the authorities

In case of error, maladministration or abuses by the competent authorities in the proper management of the preferential system at export, and in particular in the application of the provisions of the Chapter three of Title IV [Rules of origin] and the Protocol on Mutual Administrative Assistance in Customs Matters and the application, where this error, mal administration or abuses leads to consequences in terms of import duties, the contracting Party facing such consequences may request the Partnership Council to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.

## Article GOODS.21: Cultural objects

*[Placeholder: The Parties should address issues relating to the return or restitution of unlawfully removed cultural objects to their countries of origin<sup>3</sup>.]*

### Chapter two: Rules of origin

#### *Section 1: Rules of Origin*

#### Article ORIG.1: Objective

The objective of this Chapter is to lay down the provisions determining the origin of goods for the purpose of application of preferential tariff treatment under this Agreement, and setting out related origin procedures.

#### Article ORIG.2: Definitions

For the purpose of this Chapter, the following definitions apply:

- (a) "classification" means the classification of a product or material under a particular chapter, heading, or sub-heading of the Harmonised System;
- (b) "consignment" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;
- (c) "customs authority" means:
  - in [the United Kingdom] ; and
  - in the European Union, the services of the European Commission responsible for customs matters and the customs administrations and any other authorities responsible in the Member States of the European Union for the application and enforcement of customs legislation;
- (d) "exporter" means a person, located in a Party, who, in accordance with the requirements laid down in the laws and regulations of that Party, exports or produces the originating product and makes out a statement on origin;
- (e) "importer" means a person who imports the originating product and claims preferential tariff treatment for it;

---

<sup>3</sup> This provision might be placed elsewhere in the Agreement.

- (f) "material" means any substance used in the production of a product, including any components, ingredients, raw materials, or parts;
- (g) "non-originating material" means a material which does not qualify as originating under this Chapter, including a material whose originating status cannot be determined;
- (h) "product" means the product resulting from the production, even if it is intended for use as a material in the production of another product;
- (i) "production" means any kind of working or processing including assembly.

#### Article ORIG.3: General requirements

1. For the purposes of applying the preferential tariff treatment by a Party to the originating good of the other Party in accordance with this Agreement, the following products shall be considered as originating in the other Party:

- (a) products wholly obtained in that Party within the meaning of Article ORIG.5 [Wholly obtained products]; or
- (b) products produced in that Party exclusively from originating materials in that Party; or
- (c) products produced in that Party incorporating non-originating materials provided they satisfy requirements set out in ANNEX ORIG-II [Product-Specific Rules of Origin].

and when those products satisfy all other applicable requirements of Articles ORIG 4 to 14.

2. If a product has acquired originating status, the non-originating materials used in the production of that product shall not be considered as non-originating when that product is incorporated as a material in another product.

3. The acquisition of originating status shall be fulfilled without interruption in [the United Kingdom] or the Union.

#### Article ORIG.4: Cumulation of Origin

1. A product originating in a Party shall be considered as originating in the other Party if it is used as a material in the production of another product in that other Party.

2. Paragraph 1 does not apply if the production carried out in the other Party does not go beyond the operations referred to in Article ORIG.7 [Insufficient Working or Processing].

#### Article ORIG.5: Wholly Obtained Products

1. The following products shall be considered as wholly obtained in a Party:

- (a) mineral products extracted or taken from its soil or from its seabed;
- (b) plants and vegetable products grown or harvested there;
- (c) live animals born and raised there;
- (d) products obtained from live animals raised there;
- (e) products obtained from slaughtered animals born and raised there;

- (f) products obtained by hunting or fishing conducted there;
- (g) products obtained from aquaculture there, if aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants are born or raised from seed stock such as eggs, roes, fry, fingerlings or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding or protection from predators;
- (h) products of sea fishing and other products taken from the sea outside any territorial sea by a vessel of a Party;
- (i) products made aboard of a factory ship of a Party exclusively from products referred to in subparagraph (h);
- (j) products extracted from the seabed or subsoil outside any territorial sea provided that they have rights to exploit or work such seabed or subsoil;
- (k) waste and scrap resulting from production operations conducted there;
- (l) waste and scrap derived from used products collected there, provided that those products are fit only for the recovery of raw materials;
- (m) products produced there exclusively from the products specified in subparagraphs (a) to (l).

2. The terms “vessel of a Party” and “factory ship of a Party” in subparagraph 1(h) and (i) mean a vessel and factory ship which:

- (a) is registered in a Member State or in [the United Kingdom];
- (b) sails under the flag of a Member State or of [the United Kingdom]; and
- (c) meets one of the following conditions:
  - (i) is at least 50% owned by nationals of a Member State or of [the United Kingdom]; or
  - (ii) is owned by enterprises which each
    - a. have their head office and main place of business in the Union or [the United Kingdom]; and
    - b. are at least 50% owned by public entities, nationals or enterprises of a Member State or [the United Kingdom].

#### Article ORIG.6: Tolerances

1. If a product does not satisfy the requirements set out in ANNEX ORIG-II [Product-Specific Rules of Origin] due to the use of a non-originating material in the production, that product shall nevertheless be considered as originating in a Party, provided that:

- (a) the total weight of non-originating materials classified under Chapters 2 and 4 to 24 of the Harmonised System, other than processed fishery products of Chapter 16, shall not exceed 10% of the weight of the product;
- (b) the total value of non-originating materials for all other products, except for products falling within Chapters 50 to 63 of the Harmonised System shall not exceed 10% of the ex-works price of the product;

(c) for a product classified under Chapters 50 to 63 of the Harmonised System, the tolerances set out in Note 6 and 7 of ANNEX ORIG-1[Introductory Notes] shall apply.

2. Paragraph 1 does not apply if the value or weight of non-originating materials used in the production of a product exceeds any of the percentages for the maximum value or weight of non-originating materials as specified in the requirements set out in ANNEX ORIG-II [Product-Specific Rules of Origin].

3. Paragraph 1 does not apply to products wholly obtained in a Party within the meaning of Article ORIG.5 [Wholly obtained product]. If ANNEX ORIG-II [Product-Specific Rules of Origin] requires that the materials used in the production of a product are wholly obtained, paragraphs 1 and 2 apply.

#### Article ORIG.7: Insufficient Working or Processing

1. Notwithstanding subparagraph 1(c) of Article ORIG.3 [General requirements], a product shall not be considered as originating in a Party if the production of the product in a Party consists only of one or more of the following operations conducted on non-originating materials:

- (a) preserving operations such as drying, freezing, keeping in brine and other similar operations where their sole purpose is to ensure that the products remain in good condition during transport and storage;
- (b) breaking-up or assembly of packages;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles and textile articles;
- (e) simple painting and polishing operations;
- (f) husking and partial or total milling of rice; polishing and glazing of cereals and rice; bleaching of rice;
- (g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of sugar in solid form;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching including the making-up of sets of articles;
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;
- (n) simple addition of water or dilution or dehydration or denaturation of products;
- (o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;



(p) slaughter of animals.

2. For the purposes of paragraph 1, operations shall be considered simple if neither special skills nor machines, apparatus or equipment especially produced or installed are needed for carrying out those operations.

#### Article ORIG.8: Unit of Qualification

1. For the application of this Chapter, the unit of qualification shall be the particular product, which is considered as the basic unit when classifying the product under the Harmonised System.

2. For a consignment consisting of a number of identical products classified under the same heading of the Harmonised System, each individual product shall be taken into account when applying the provisions of this Chapter.

#### Article ORIG.9: Packing Materials and Containers for Shipment

Packing materials and containers for shipment that are used to protect a product during transportation shall be disregarded in determining whether a product is originating.

#### Article ORIG.10: Packaging Materials and Containers for Retail Sale

Packaging materials and containers in which the product is packaged for retail sale, if classified with the product, shall be disregarded in determining the origin of the product, except for the purposes of calculating the maximum value of non-originating materials if a product is subject to a maximum value of non-originating materials in accordance with ANNEX ORIG-II [Product Specific Rules of Origin].

#### Article ORIG.11: Accessories, Spare Parts and Tools

1. Accessories, spare parts, tool and instructional or other information materials shall be regarded as one product with the piece of equipment, machine, apparatus or vehicle in question if they:

- (a) are classified and delivered with, but not invoiced separately from, the product; and
- (b) are of the types, quantities and value of customary for that product.

2. Accessories, spare parts, tool and instructional or other information materials referred to paragraph 1 shall be disregarded in determining the origin of the product except for the purposes of calculating the maximum value of non-originating materials if a product is subject to a maximum value of non-originating materials set out in ANNEX ORIG- II [Product Specific Rules of Origin].

#### Article ORIG.12: Sets

Sets, as defined in General Rule 3 for the Interpretation of the Harmonised System, shall be considered as originating in a Party if all of their components are originating. If a set is composed of originating and non-originating components, the set as a whole shall be considered as originating in a Party, provided that the value of the non-originating components does not exceed 15% of the ex-works price of the set.

#### Article ORIG.13: Neutral Elements

In order to determine whether a product is originating in a Party, it shall not be necessary to determine the origin of the following elements, which might be used in its production:

- (a) fuel, energy, catalysts and solvents;

- (b) plant, equipment, spare parts and materials used in the maintenance of equipment and buildings;
- (c) machines, tools, dies and moulds;
- (d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies;
- (f) equipment, devices and supplies used for testing or inspecting the product; and
- (g) other materials used in the production which are not incorporated into the product nor intended to be incorporated into the final composition of the product.

#### Article ORIG.14: Accounting Segregation for Fungible Materials

1. Originating and non-originating fungible materials shall be physically segregated during storage in order to maintain their originating and non-originating status.
2. For the purpose of paragraph 1, “fungible materials” means materials that are of the same kind and commercial quality, with the same technical and physical characteristics, and which cannot be distinguished from one another once they are incorporated into the finished product.
3. Notwithstanding paragraph 1, originating and non-originating fungible materials may be used in the production of a product without being physically segregated during storage provided that an accounting segregation method is used.
4. The accounting segregation method referred to in paragraph 3 shall be applied in conformity with a stock management method under accounting principles which are generally accepted in the Party.
5. The accounting segregation method shall be any method that ensures that at any time no more materials receive originating status than would be the case if the materials had been physically segregated.
6. A Party may require, under conditions set out in its laws or regulations, that the use of an accounting segregation method is subject to prior authorisation by the customs authorities of that Party. The customs authorities of the Party shall monitor the use of the authorisation and may withdraw the authorisation if the holder makes improper use of the accounting segregation method or fails to fulfil any of the other conditions laid down in this Chapter.

#### Article ORIG.15: Returned Products

If an originating product of a Party exported from that Party to a third country returns to that Party, it shall be considered as non-originating unless it can be demonstrated to the satisfaction of the customs authority of that Party that the returning product:

- (a) is the same as that exported; and
- (b) has not undergone any operation other than that necessary to preserve it in good condition while in that third country or while being exported.

## Article ORIG.16: Non Alteration

1. An originating product declared for home use in the importing Party shall not have after exportation and prior to being declared for home use, been altered, transformed in any way or subjected to operations other than to preserve it in good condition or than adding or affixing marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party.
2. Storage or exhibition of a product may take place in a third country provided that it remains under customs supervision in that third country.
3. The splitting of consignments may take place in a third country if it is carried out by the exporter or under its responsibility and provided that the consignments remain under customs supervision in that third country.
4. In case of doubt as to whether the requirements provided for in paragraphs 1 to 3 are complied with, the customs authority of the importing Party may request the importer to provide evidence of compliance, which may be given by any means, including contractual transport documents such as bills of lading or factual or concrete evidence based on marking or numbering of packages or any evidence related to the product itself.

## Article ORIG.17: Prohibition of Drawback of, or Exemption from, Import Duties

[PLACEHOLDER]

## *Section 2: Origin Procedures*

### Article ORIG.18: Claim for Preferential Tariff Treatment

1. The importing Party shall, on importation, grant preferential tariff treatment to a product originating in the other Party within the meaning of this Chapter on the basis of a claim by the importer for preferential tariff treatment. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and compliance with the requirements provided for in this Chapter.
2. A claim for preferential tariff treatment shall be based on:
  - (a) a statement on origin that the product is originating made out by the exporter; or
  - (b) the importer's knowledge that the product is originating.
3. The importer making a claim for preferential tariff treatment based on a statement on origin referred to in subparagraph 2(a) shall keep the statement on origin and, when required by the customs authority of the importing Party, provide a copy thereof to that authority.

### Article ORIG.18a: Time of the claim for preferential tariff treatment

1. A claim for preferential tariff treatment and its basis as referred to in paragraph 2 of Article ORIG.18 [Claim for Preferential Tariff Treatment] shall be included in the customs import declaration in accordance with the laws and regulations of the importing Party.
2. By way of derogation from paragraph 1, when the importer did not make a claim for preferential tariff treatment at the time of importation, the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid provided that:
  - (a) the claim for preferential tariff treatment is made no later than three years after the date of

- importation, or such longer time period as specified in the laws and regulations of a Party,
- (b) the importer provides the basis for the claim as referred to in paragraph 2 of Article ORIG.18 [Claim for preferential tariff treatment] and
  - (c) the product would have been considered originating and satisfy all other applicable requirements within the meaning of Section 1 of this Chapter if it had been claimed by the importer at the time of importation.

The other obligations relying on the importer in accordance with Article ORIG.18 remain unchanged.

#### Article ORIG.19: Statement on Origin

1. A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including, information on the originating status of materials used in the production of the product. The exporter is responsible for the correctness of the statement on origin and the information provided.
2. A statement on origin shall be made out using one of the language versions set out in ANNEX ORIG-3 [Text of the Statement on Origin] on an invoice or on any other document that describes the originating product in sufficient detail to enable its identification. The exporter shall bear the responsibility to provide sufficient detail to identify the originating product. The importing Party shall not require the importer to submit a translation of the statement on origin.
3. A statement on origin shall be valid for 12 months from the date it was made out.
4. A statement on origin may apply to:
  - (a) a single shipment of one or more products imported into a Party; or
  - (b) multiple shipments of identical products into a Party within the period specified in the statement on origin not exceeding 12 months.
5. If, on request of the importer, unassembled or disassembled products within the meaning of General Rule 2(a) of the Harmonised System falling within Sections XV to XXI of the Harmonised System are imported by instalments, a single statement on origin for such products may be used in accordance with the requirements laid down by the customs authority of the importing Party.

#### Article ORIG.20: Discrepancies and Minor Errors

The customs authority of the importing Party shall not reject a claim for preferential tariff treatment due to minor errors or discrepancies in the statement on origin.

#### Article ORIG.21: Importer's Knowledge

The importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Chapter.

#### Article ORIG.22: Record Keeping Requirements

1. An importer making a claim for preferential tariff treatment for a product imported into the importing Party shall, for a minimum of three years after the date of importation of the product, keep:

- (a) if the claim was based on a statement on origin, the statement on origin made out by the exporter;
  - (b) if the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements to obtain originating status
2. An exporter who has made out a statement on origin shall, for a minimum of four years after the making out of that statement on origin, keep a copy of the statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status.
3. The records to be kept in accordance with this Article may be held in electronic format.

#### Article ORIG.23: Small Consignments

1. In derogation to Articles ORIG.18 [Claim for Preferential Tariff Treatment] to ORIG.21 [Importer's Knowledge], the importing Party shall grant preferential tariff treatment to:

- (a) a product sent in a small package from private persons to private persons; and
- (b) a product forming part of a traveller's personal luggage;

when such a product has been declared as meeting the requirements of this Chapter, where the customs authority of the importing Party has no doubts as to the veracity of such declaration.

2. The following products are excluded from the application of paragraph 1:

- (a) a product imported by way of trade. The imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is in view;
- (b) products whose importation forms part of a series of importations that may reasonably be considered to have been made separately for the purpose of avoiding the requirements of Article ORIG.18 [Claim for Preferential Tariff Treatment];
- (c) products whose total value exceeds:
  - (i) in the case of the Union, EUR 500 in the case of products sent in small packages, or EUR 1 200 in the case of products forming part of a traveller's personal luggage. The amounts to be used in a given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The amounts shall be those published for that day by the European Central Bank, unless a different amount is communicated to the European Commission by 15 October, and shall apply from 1 January the following year. The European Commission shall notify [PLACEHOLDER] of the relevant amounts;
  - (ii) in the case of [United Kingdom],[PLACEHOLDER]

3. The importer is responsible for the correctness of the declaration and for the compliance with the requirements provided for in this Chapter. The record-keeping requirements set out in Article ORIG.22 [Record Keeping Requirements] shall not apply to the importer under this Article.

## Article ORIG.24: Verification

1. The customs authority of the importing Party may conduct a verification whether a product is originating or the other requirements of this Chapter are satisfied based on risk assessment methods, which may include random selection. Such verification may be conducted by means of a request for information from the importer who made the claim referred to in Article ORIG.18 [Claim for Preferential Tariff Treatment], at the time the import declaration is submitted, before the release of the products, or after the release of the products.
2. The information requested pursuant to paragraph 1 shall cover no more than the following elements:
  - (a) if the claim was based on a statement on origin, that statement on origin;
  - (b) information pertaining to the fulfilment of origin criteria; that information shall be, where the origin criterion is:
    - (i) “wholly obtained”: the applicable category (such as harvesting, mining, fishing) and place of production;
    - (ii) based on change in tariff classification: a list of all the non-originating materials including their tariff classification (in 2, 4 or 6 digit format, depending on the origin criterion);
    - (iii) based on a value method: the value of the final product as well as the value of all the non-originating materials used in the production;
    - (iv) based on weight: the weight of the final product as well as the weight of the relevant non-originating materials used in the final product;
    - (v) based on a specific production process: a description of that specific process.
3. When providing the requested information, the importer may add any other information that it considers relevant for the purpose of verification.
4. If the claim for preferential tariff treatment is based on a statement on origin, the importer shall provide that statement but may reply to the customs authority of the importing Party that he cannot provide the information referred to in point (b) of paragraph 2.
5. If the claim for preferential tariff treatment is based on the importer’s knowledge, after having first requested information in accordance with paragraph 1 of this Article, the customs authority of the importing Party conducting the verification may request information to the importer if that customs authority considers that additional information is necessary in order to verify the originating status of the product or whether the other requirements of this Chapter are met. The customs authority of the importing Party may request the importer for specific documentation and information, if appropriate.
6. If the customs authority of the importing Party decides to suspend the granting of preferential tariff treatment to the product concerned while awaiting the results of the verification, release of the products shall be offered to the importer subject to appropriate precautionary measures including guarantees. Any suspension of preferential tariff treatment shall be terminated as soon as possible after the customs authority of the importing Party has ascertained the originating status of the products concerned, or the fulfilment of the other requirements of this Chapter.

## Article ORIG.25: Administrative Cooperation

1. In order to ensure the proper application of this Chapter, the Parties shall cooperate, through the customs authority of each Party, in verifying whether a product is originating and in compliance with the other requirements provided for in this Chapter.

2. If the claim for preferential tariff treatment was based on a statement on origin, after having first requested information in accordance with paragraph 1 of Article ORIG.24 [Verification], and based on the reply from the importer, the customs authority of the importing Party conducting the verification may also request information from the customs authority of the exporting Party within a period of two years after the importation of the products, if the customs authority of the importing Party conducting the verification considers that additional information is necessary in order to verify the originating status of the product or whether the other requirements provided for in this Chapter are met. The request for information shall include the following elements:

- (a) the statement on origin;
- (b) the identity of the customs authority issuing the request;
- (c) the name of the exporter;
- (d) the subject and scope of the verification; and
- (e) where applicable any relevant documentation.

In addition, the customs authority of the importing Party may request the customs authority of the exporting Party for specific documentation and information, where appropriate.

3. The customs authority of the exporting Party may, in accordance with its laws and regulations, request documentation or examination by calling for any evidence, or by visiting the premises of the exporter, to review records and observe the facilities used in the production of the product.

4. Without prejudice to paragraph 5, the customs authority of the exporting Party receiving the request referred to in paragraph 2 shall provide the customs authority of the importing Party with the following information:

- (a) the requested documentation, where available;
- (b) an opinion on the originating status of the product;
- (c) the description of the product subject to examination and the tariff classification relevant to the application of this Chapter;
- (d) a description and explanation of the production process sufficient to support the originating status of the product;
- (e) information on the manner in which the examination was conducted; and
- (f) supporting documentation, where appropriate.

5. The customs authority of the exporting Party shall not provide the information referred to in paragraph 4 (a), (d) and (f) to the customs authority of the importing Party if that information is deemed confidential by the exporter.

6. Each Party shall notify the other Party of the contact details of the customs authorities and shall notify the other Party of any modification regarding such information within 30 days after the date of the modification.

#### Article ORIG.26: Denial of Preferential Tariff Treatment

1. Without prejudice to paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment, if:

- (a) within three months after the date of the request for information pursuant to paragraph 1 of Article ORIG.24 [Verification]:
  - (i) no reply is provided by the importer;
  - (ii) if the claim for preferential tariff treatment was based on a statement on origin, the statement on origin was not provided; or
  - (iii) if the claim for preferential tariff treatment was based on the importer's knowledge, the information provided by the importer is inadequate to confirm that the product is originating;
- (b) within three months after the date of the request for additional information pursuant to paragraph 5 of Article ORIG.24 [Verification]:
  - (i) no reply is provided by the importer; or
  - (ii) the information provided by the importer is inadequate to confirm that the product is originating;
- (c) within 10 months following the request for information pursuant to paragraph 2 of Article ORIG.25 [Administrative Cooperation]:
  - (i) no reply is provided by the customs authority of the exporting Party; or
  - (ii) the information provided by the customs authority of the exporting Party is inadequate to confirm that the product is originating;

2. The customs authority of the importing Party may deny preferential tariff treatment to a product for which an importer claims preferential tariff treatment where the importer fails to comply with requirements of this Chapter other than those relating to the originating status of the products.

3. If the customs authority of the importing Party has sufficient justification to deny preferential tariff treatment under paragraph 1, in cases where the customs authority of the exporting Party has provided an opinion pursuant to subparagraph 4(b) of Article ORIG.25 [Administrative Cooperation] confirming the originating status of the products, the customs authority of the importing Party shall notify the customs authority of the exporting Party of its intention to deny the preferential tariff treatment within two months after the date of receipt of that opinion.

If such notification is made, consultations shall be held on request of a Party, within three months



after the date of the notification. The period for consultation may be extended on a case by case basis by mutual agreement between the customs authorities of the Parties. The consultation may take place in accordance with the procedure set by the [Specialised Committee on Customs Cooperation].

Upon the expiry of the period for consultation, if the customs authority of the importing Party cannot confirm that the product is originating, it may deny the preferential tariff treatment if it has a sufficient justification for doing so and after having granted the importer the right to be heard. However, when the customs authority of the exporting Party confirms the originating status of the products and provides justification for such conclusion, the customs authority of the importing Party shall not deny preferential tariff treatment to a product on the sole ground that Article 25.5 has been applied.

#### Article ORIG.27: Confidentiality

1. Each Party shall maintain, in accordance with its laws and regulations, the confidentiality of any information provided to it by the other Party, pursuant to this Chapter, and shall protect that information from disclosure.
2. Information obtained by the authorities of the importing Party pursuant to this Chapter may only be used by those authorities for the purposes of this Chapter.
3. Notwithstanding ORIG Article 25(5), confidential business information obtained from the exporter by the customs authority of the exporting Party or of the importing Party through the application of Articles ORIG 24 [Verification] and 25 [Administrative Cooperation] shall not be disclosed.
4. Information obtained by the customs authority of the importing Party pursuant to this Chapter shall not be used by the importing Party in any criminal proceedings carried out by a court or a judge, unless permission to use such information is granted by the exporting Party in accordance with its laws and regulations.

#### Article ORIG.28: Administrative Measures and Sanctions

Each Party shall ensure the effective enforcement of this Chapter. Each Party shall ensure that the competent authorities can impose administrative measures, and where appropriate sanctions, in accordance with its laws and regulations, on any person who draws up a document, or causes a document to be drawn up, which contains incorrect information provided for the purpose of obtaining a preferential tariff treatment for a product, who does not comply with the requirements set out in Article ORIG.22 [Record Keeping Requirements], or who does not provide the evidence or refuses the visit referred to in Article ORIG.25(4) [Administrative Cooperation].

### *Section 3: Other Provisions*

#### Article ORIG.29: Ceuta and Melilla

1. For purposes of this Chapter, in the case of the European Union, the term “Party” does not include Ceuta and Melilla.
2. Products originating in [the United Kingdom], when imported into Ceuta and Melilla, shall in all respects be subject to the same customs treatment under this Agreement, as that which is applied to products originating in the customs territory of the European Union under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Union. [The United

Kingdom] shall grant to imports of products covered by the Agreement and originating in Ceuta and Melilla the same customs treatment, as that which is granted to products imported from and originating in the European Union.

3. The rules of origin and origin procedures referred to in this Chapter shall apply *mutatis mutandis* to products exported from [the United Kingdom] to Ceuta and Melilla and to products exported from Ceuta and Melilla to [the United Kingdom].

4. Ceuta and Melilla shall be considered as a single territory.

5. Article ORIG.4 [Cumulation of Origin] applies to import and exports of products between the European Union, [the United Kingdom] and Ceuta and Melilla.

6. The exporters shall enter “the United Kingdom” or “Ceuta and Melilla” in field 3 of the text of the statement on origin, depending on the origin of the product.

7. The customs authority of the Kingdom of Spain shall be responsible for the application and implementation of this Chapter in Ceuta and Melilla.

#### Article ORIG.30: Transitional Provisions for Products in Transit or Storage

The provisions of this Agreement may be applied to products which comply with the provisions of this Chapter and which on the date of entry into force of this Agreement are either in transit from the exporting Party to the importing Party or under customs control in the importing Party without payment of import duties and taxes, subject to the making of a claim for preferential tariff treatment referred to in Article ORIG.18 [Claim for Preferential Tariff Treatment] of this Chapter to the customs authority of the importing Party, within 12 months of that date.

#### Article ORIG.31: Amendment to this Chapter and its Annexes

The Specialised Committee on Customs Cooperation may amend this Chapter and its Annexes.

### Chapter three: Sanitary and Phytosanitary Issues

#### Article SPS.1: Objective

The objectives of this Chapter are:

- (a) to protect human, animal or plant life and health in the territories of the Parties while facilitating trade between the Parties;
- (b) ensure that the Parties' sanitary and phytosanitary (“SPS”) measures do not create unnecessary barriers to trade;
- (c) to cooperate on the further implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures;
- (d) to provide a means to establish and maintain transparency, communication, cooperation and to resolve problems related to the implementation of SPS measures in trade between the Parties;
- (e) to cooperate on combating antimicrobial resistance, promoting sustainable food systems, protecting animal welfare, and on electronic certification;

- (f) to cooperate on the development and implementation of international standards, guidelines and recommendations.

#### Article SPS.2: Scope

This Chapter applies to all SPS measures of a Party that may, directly or indirectly, affect trade between the Parties.

#### Article SPS.3: Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "SPS Agreement" means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.
- (b) The definitions contained in Annex A of the SPS Agreement shall apply.
- (c) The Specialised Committee on Sanitary and Phytosanitary Measures may adopt other definitions for the application of this Chapter taking into consideration the glossaries and definitions of the relevant international organisations, such as the Codex Alimentarius Commission ("Codex Alimentarius"), the World Organisation for Animal Health ("OIE") and the International Plant Protection Convention ("IPPC"). In the event of an inconsistency between definitions adopted by the Specialised Committee and the definitions set out in the SPS Agreement, the definitions set out in the SPS Agreement shall prevail.
- (d) In addition, for the purpose of this Chapter:
- (i) "import conditions" means any sanitary or phytosanitary measures that are required to be fulfilled for the import of products;
  - (ii) "protected zone" for a specific regulated plant pest means an officially defined geographical part of the territory of each Party in which that pest is not established in spite of favourable conditions and its presence in other parts of the territory of the Party, and where that pest is not allowed to be introduced into, moved within, or held, multiplied or released.

#### Article SPS.4: Rights and obligations

The Parties reaffirm their rights and obligations under the SPS Agreement.

#### Article SPS.5: General principles

1. The Parties shall apply SPS measures for achieving their appropriate level of protection that are based on risk assessment in accordance with relevant provisions, including Article 5 of the SPS Agreement.
2. The Parties shall not use SPS measures to create unjustified barriers to trade.
3. Regarding trade-related sanitary and phytosanitary procedures and approvals established under this Chapter, each Party shall ensure that these procedures and related SPS measures:
  - (a) are initiated and completed without undue delay;

- (b) do not include unnecessary, scientifically and technically unjustified or unduly burdensome information requests that may delay access to each other's markets;
- (c) are not applied in a manner which would constitute an arbitrary or unjustifiable discrimination against the other Party's entire territory or parts of the other Party's territory where identical or similar SPS conditions exist;
- (d) are proportionate to the risks identified and not more trade restrictive than necessary to achieve the importing Party's appropriate level of protection.

4. The Parties shall not use the procedures referred to in paragraph 3 or any requests for additional information to delay access to their markets without scientific and technical justification.

5. Each Party shall ensure that any administrative procedure it requires concerning the import conditions on food safety, animal health, plant health are not more burdensome/trade restrictive than necessary to give the importing member Party adequate confidence that these conditions are met. Each Party shall ensure that the negative effects on trade of any administrative procedures are kept to a minimum and that the clearance processes remain simple and expedite while meeting the importing Party's conditions.

6. Where the importing Party requires official certificates, the model certificates shall be:

(a) set in line with the principles as laid down in the international standards of Codex Alimentarius, IPPC and OIE; and

(b) applicable to imports from all parts of the territory of the exporting party.

7. The Specialised Committee on Sanitary and Phytosanitary measures may agree on specific cases where the official model certificates referred to in paragraph 6 would be established only for a part or parts of the exporting party.

8. The Parties shall promote the implementation of electronic certification and other technologies to facilitate trade.

9. The importing Party shall not put in place any additional administrative system or procedures that unnecessarily hampers trade.

#### Article SPS.6: Import conditions and procedures

1. Without prejudice to the rights and obligations each Party has under the SPS Agreement, and this Chapter, the import conditions of the importing Party shall apply to the entire territory of the exporting Party in a consistent manner.

2. The exporting Party shall ensure that products exported to the other Party, such as animals and animal products, plants and plant products, or other related goods, meet the SPS requirements of the importing Party.

3. Whenever justified, the importing Party may require that import of certain commodities from the exporting Party or part thereof is subject to authorisation granted following the examination of a request by the relevant competent authority of the exporting Party where it would objectively demonstrate, to the satisfaction of the importing Party, that its requirements for such authorisation are fulfilled. In examining the request, each Party shall take account of, inter alia, the implementation of SPS rules of the importing Party on the territory of the exporting Party.

4. The importing Party shall make available its import conditions for all commodities. The importing Party shall ensure that its import conditions are applied in a proportionate and non-discriminatory manner.

5. Without prejudice to Article SPS.13 [Provisional measures], for commodities where a phytosanitary concern exists, the import conditions shall be restricted to measures ensuring the absence of regulated pests of the importing Party and shall be applicable to the entire territory of the exporting Party.

6. In case of import authorisation requests for a specific product, where the exporting Party has requested to be examined only for a part or certain parts of its territory (in the case of the Union, individual Member States), the importing Party shall promptly proceed to the examination of that request. In case of requests concerning multiple parts of the territory of the exporting Party where identical or similar SPS conditions exist, the examination by the importing party shall not take longer than for a request concerning a single part of the territory of the exporting Party.

7. Other than in duly justified circumstances, in case of subsequent import authorisation requests related to the same product from an additional part or parts the territory of the exporting Party, the importing Party shall conclude its examination no later than six months after the date of receipt.

8. Information requirements shall be limited to what is necessary for the approval process to take into account information already available in the importing Party, such as on the legislative framework and audit reports of the exporting Party.

9. In relation to the process set out in paragraphs 3 to 7, the following actions shall be taken:

- (a) As soon as the importing Party has positively concluded its assessment, it shall promptly take all necessary legislative and administrative measures to allow trade to take place without undue delay;
- (b) The exporting Party shall:
  - (i) provide all relevant information required by the importing Party;
  - (ii) give reasonable access to the importing Party for audit and other relevant procedures.
- (c) The importing Party shall limit import requirements for plants or plant products to measures ensuring the absence of regulated pests, and shall establish a list of regulated pests for commodities where a phytosanitary concern exists. That list shall contain:
  - (i) the pests not known to occur within any part of its own territory;
  - (ii) the pests known to occur within its own territory and under official control;
  - (iii) the pests known to occur within parts of its own territory and for which pest free areas or protected zones are established.
  - (iv) non-quarantine pests known to occur within its own territory and under official control for specified planting material;

10. The importing Party shall accept consignments without requiring that importing Party verifies compliance of those consignments before their departure on the territory of the exporting country.

11. Any fees imposed for the procedures on imported products shall be equitable in relation to any fees charged on like domestic products and shall not be higher than the actual cost of the service.
12. The importing Party shall have the right to carry out import checks on products imported from the exporting Party for the purposes of ensuring the compliance with its SPS import requirements. In applying its rules on import checks, each Party shall take account of, inter alia, the implementation of SPS rules of the importing Party on the territory of the exporting Party.
13. The import checks carried out on products imported from the exporting Party shall be based on the SPS risk associated with such importations. Import checks shall be carried out only to the extent necessary to protect human, animal or plant life and health, without undue delay and with a minimum effect on trade between the Parties.
14. Information on the proportion of products from the exporting Party checked at import shall be made available by the importing Party upon request of the exporting Party. The importing Party may change the frequencies of physical checks on consignments, as appropriate, as a consequence of the results of verifications and import checks and of bilaterally agreed action, or due to the outcome of consultations provided for in this Chapter.
15. In the event that the import checks demonstrate that products do not conform with the relevant import conditions of the importing Party, any action taken by the importing Party should be proportionate to the SPS risk associated with the import of the non-compliant product.

#### Article SPS.7: Lists of approved establishments

1. Whenever justified, the importing Party can maintain a list of approved establishments meeting its import requirements as a condition to allow imports from these establishments.
2. Unless justified, lists of approved establishments shall only be required for the categories of products for which that was required at the end of the transition period under the Withdrawal Agreement.
3. The exporting Party shall inform the importing Party of its list of establishments meeting the importing Party's conditions and based on guarantees provided by the exporting Party.
4. Upon a request from the exporting Party, the importing Party shall approve establishments which are situated on the territory of the exporting Party based on guarantees provided by the exporting Party, without prior inspection of individual establishments.
5. Unless the importing Party requests additional information and subject to guarantees being provided by the exporting party, the importing Party shall take the necessary legislative or administrative measures, in accordance with its applicable legal procedures, to allow imports from those establishments without undue delay.
6. The list of the approved establishments shall be made publicly available by the importing Party.
7. Where the importing Party decides to reject the request of the exporting Party to accept adding an establishment to the list of approved establishments, it shall inform the exporting Party without delay and shall submit a reply, including information about the non-conformities which led to the rejection of the establishment's approval.

## Article SPS.8: Transparency and exchange of information

1. Each Party shall pursue transparency as regards SPS measures applicable to trade and shall for those purposes undertake the following actions:
  - (a) promptly communicate to the other Party any changes to its SPS measures and approval procedures including changes that may affect its capacity to fulfil the SPS import requirements of the other Party for certain commodities;
  - (b) enhance mutual understanding of its SPS measures and their application;
  - (c) exchange information with the other Party on matters related to the development and application of SPS measures, including the progress on new available scientific evidence, that affect, or may affect, trade between the Parties with a view to minimising negative trade effects;
  - (d) upon request of the other Party, communicate the conditions that apply for the import of specific products within 20 working days;
  - (e) upon request of the other Party, communicate the state of play of the procedure for the authorisation of specific products within 20 working days.
2. Where a Party has made available the information in paragraph 1 via notification to the WTO in accordance with the relevant transparency rules or where a Party has made that information made available on its official, publicly accessible and fee free web-sites, its obligation under paragraph 1 shall be deemed to be met.

## Article SPS.9: Adaptation to regional conditions

1. The Parties shall recognise the concept of disease or pest-free areas, protected zones and areas of low disease or pest prevalence, in accordance with the SPS Agreement, OIE and IPPC standards, guidelines or recommendations of the OIE and pest free production sites of the IPPC. The Specialised Committee on Sanitary and Phytosanitary measures may define further details for these procedures, taking into account any relevant SPS Agreement, OIE and IPPC standards, guidelines or recommendations.
2. With regard to animals and animal products, when establishing or maintaining import conditions upon the request of the exporting Party, the importing Party shall recognise the disease-free zones established by the exporting Party as a basis for consideration towards the determination of allowing or maintaining the import, without prejudice to paragraph 6.
3. The exporting Party shall identify the parts of its territory referred to in paragraph 2 and, if requested, provide a full explanation and supporting data based on the OIE standards, or in other ways established by the Specialised Committee on Sanitary and Phytosanitary measures based on the knowledge acquired through experience of the exporting Party's relevant authorities.
4. With regard to plants and plant products, when establishing or maintaining phytosanitary import conditions on request of the exporting Party, the importing Party shall recognise the pest free areas, pest free places of production, pest free production sites, areas of low pest prevalence and protected zones established by the exporting Party as a basis for consideration towards the determination to allow or maintain the import, without prejudice to paragraph 6.
5. The exporting Party shall identify its pest free areas, pest free places of production, pest free production sites and areas of low pest prevalence or protected zones. If requested by the importing Party, the exporting Party shall provide a full explanation and supporting data based on the

International Standards for Phytosanitary Measures developed under the IPPC, or in other ways established by the Specialised Committee on Sanitary and Phytosanitary measures, based on the knowledge acquired through experience of the exporting Party's relevant phytosanitary authorities.

6. The Parties shall recognise each other's established disease- or pest-free areas, protected zones and areas of low pest or disease prevalence in place at the end of the transition period under the Withdrawal Agreement, as well as their subsequent adaptations except in cases of major changes in the disease or pest situations.

7. The Parties may carry out audits pursuant to Article SPS.10 [Audits] to implement paragraphs 3 to 6.

8. The Parties shall establish close cooperation with the objective of maintaining confidence in the procedures in relation to the establishment of disease- or pest-free areas, pest free places of production, pest free production sites and areas of low pest or disease prevalence and protected zones, with the aim to minimise trade disruption.

9. The importing Party shall in principle base its own determination of the animal or plant health status of the exporting Party or parts thereof on the information provided by the exporting Party in accordance with the SPS Agreement, OIE and IPPC standards, and take into consideration any determination made by the exporting Party.

10. Where the importing Party does not accept the determination made by the exporting Party as referred to in paragraph 9, the importing Party shall objectively justify and explain to the exporting Party the reasons for that rejection.

11. Each Party shall ensure that the obligations set out in paragraphs 2 to 6, 9 and 10 are carried out without undue delay.

#### Article SPS.10: Audits

1. The importing Party may carry out audits of the following systems:

- (a) all or part of the other Party's authorities' inspection and certification system;
- (b) the results of the controls carried out under the exporting Party's inspection and certification system.

2. The Parties shall carry out those audits in accordance with the provisions of the SPS Agreement, taking into account the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE or IPPC.

3. For the purposes of carrying out such audit, the importing Party may conduct audits by means of requests of information from the exporting Party or audit visits to the exporting Party.

4. The importing Party shall share with the exporting Party the results and conclusions of the audits carried out pursuant to paragraph 1. The importing Party may make these results publicly available.

5. Each Party shall bear its own costs associated with audits.



#### Article SPS.11: Notification and Consultation

1. Each Party shall notify in writing to the other Party within 2 working days, of any serious or significant human, animal or plant life and health risk, including any food emergencies.
2. If a Party has serious concerns regarding a risk to human, animal or plant life and health, affecting commodities for which trade takes place, consultations regarding the situation should, on request, take place as soon as possible. Each Party should endeavour in such conditions, to provide all the information necessary to avoid disruption in trade.
3. Consultations referred to in paragraph 2 may be held via telephone conference, videoconference, or any other means of communication mutually agreed on by the Parties.

#### Article SPS.12: Emergency measures

1. If the importing Party considers that there is a serious risk for human, animal or plant life and health, it may take without prior notification the necessary measures for the protection of human, animal or plant life and health. For consignments that are in transport between the Parties, the importing Party shall consider the most suitable and proportionate solution to avoid unnecessary disruptions to trade.
2. The Party taking the measures shall inform the other Party as soon as possible and in any case not later than 24 hours after the adoption of the measure. The other Party may request any information related to the SPS situation and measures adopted and the Party taking the measures shall answer as soon as the requested information is available.
3. Upon request of either Party, the Parties shall hold consultations within 15 working days of the notification. These consultations shall be carried out in order to avoid unnecessary disruptions to trade. The Parties may consider options for the facilitation of the implementation or the replacement of the measures.
4. The importing Party shall consider information provided, in a timely manner, by the exporting Party when making decisions with respect to consignments that, at the time of adoption of emergency measures, are being transported between the Parties, in order to avoid unnecessary disruptions to trade.
5. The importing Party shall ensure that any emergency measure taken on the grounds referred to in paragraph 1 is not maintained without scientific evidence.

#### Article SPS.13: Provisional measures

In cases where relevant scientific evidence is insufficient, a Party may provisionally adopt SPS measures on the basis of available pertinent information, including that from the relevant international organisations. In such circumstances, the Party adopting the measure shall seek to obtain the additional information necessary for a comprehensive assessment of risk and review the measure accordingly within a reasonable period of time.

#### Article SPS.14: Animal Welfare

1. The Parties recognise that animals are sentient beings.
2. The Parties shall cooperate in international fora to promote the development of good animal welfare practices and their implementation. In this context, the Parties recognise the value of the OIE animal welfare standards, and shall endeavour to improve their development and implementation.

3. The Parties shall exchange information, expertise and experiences in the field of animal welfare, particularly on regulatory standards related to breeding, holding, handling, transportation and slaughter of food-producing animals.

4. The Parties shall strengthen their cooperation on research in the area of animal welfare related to animal breeding and the treatment of animals on farms, during transport and at slaughter.

#### Article SPS.15: Antimicrobial resistance

1. The Parties recognise that antimicrobial resistance is a serious threat to human and animal health. The Parties recognise that the nature of the threat requires a transnational and “One Health” approach.

2. Each Party shall, with a view to combating antimicrobial resistance, endeavour to co-ordinate with regional or multilateral work programmes for reducing the use of antibiotics in animal production and for banning their use as growth promoters.

3. The Parties shall collaborate in the development of international guidelines, standards, recommendations and actions in relevant international organisations aiming to promote the prudent and responsible use of antibiotics in animal husbandry and veterinary practices.

4. This dialogue shall cover, *inter alia*:

- (a) collaboration to follow up existing and future guidelines, standards, recommendations and actions developed in relevant international organisations, initiatives and national plans aiming to promote the prudent and responsible use of antibiotics and relating to animal production and veterinary practices;
- (b) collaboration in the implementation of the recommendations of OIE, WHO and Codex, in particular CAC-RCP61/2005;
- (c) exchange of information on good farming practices;
- (d) promotion of research, innovation and development;
- (e) promotion of multidisciplinary approaches to combat antimicrobial resistance, including the One Health approach of WHO, OIE and Codex Alimentarius.

#### Article SPS.16: Sustainable food systems

Each Party shall encourage its food safety, animal and plant health services to cooperate with their counterparts in the other Party with the aim of promoting sustainable food production methods and food systems, including sustainable fisheries and aquaculture.

#### Article SPS.17: Multilateral international fora

The Parties agree to cooperate in multilateral international fora on the development of international standards, guidelines and recommendations in the area under the scope of this Chapter.

#### Article SPS.18: Regulatory cooperation

The Parties shall maintain regular dialogue and exchange of information on the ongoing processes on the development of new regulations or on reviewing existing ones in the areas under the scope of this Chapter.

#### Article SPS.19: Implementation and competent authorities

1. Each Party shall, for the purposes of the implementation of this Chapter, take all of the following into account:
  - (a) decisions of the WTO SPS Committee;
  - (b) the work of the relevant international standard setting bodies;
  - (c) any knowledge and past experience it has in trading with the exporting Party;
  - (d) information provided by the other Party.
2. The Parties shall, without delay, provide each other with a description of the competent authorities of the Parties for the implementation of this Chapter. The Parties shall notify each other of any significant change to these competent authorities.
3. Each Party shall ensure that its competent authorities have the necessary resources to effectively implement this Chapter.

#### Chapter four: Technical barriers to trade

##### Article TBT.1: Objective

The objective of this Chapter is to facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade.

##### Article TBT.2: Scope

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, which may affect trade in goods between the Parties.
2. This Chapter shall not apply to:
  - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies;
  - (b) SPS measures that fall within scope of Chapter three [SPS] of this Title.

##### Article TBT.3: Relationship with the TBT Agreement

1. Articles 2 to 9 and Annex 1 and 3 to the WTO Agreement on Technical Barriers to Trade Agreement ("TBT Agreement") are incorporated into and made part of this Agreement *mutatis mutandis*.
2. Terms referred to in this Chapter shall have the same meaning as they have in the TBT Agreement.

##### Article TBT.4: Technical regulations

1. Each Party shall carry out, in accordance with its respective rules and procedures, an impact assessment of planned technical regulations.

2. Each Party shall assess the available regulatory and non-regulatory alternatives to the proposed technical regulation that may fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement.

3. Each Party shall use relevant international standards as a basis for its technical regulations except when it can demonstrate that such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

4. International standards developed by the organisations listed in ANNEX TBT-1 shall be considered to be the relevant international standards within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement provided that in their development these organisations have complied with the principles and procedures set out in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations with Relation to Article 2, Article 5 and Annex 3 of the TBT Agreement<sup>4</sup>.

5. Where a Party did not use international standards as a basis for a technical regulation, it shall, on request of the other Party, identify any substantial deviation from the relevant international standard, explain the reasons why such standards were judged inappropriate or ineffective for the aim pursued, and provide the scientific or technical evidence on which this assessment is based.

6. Each Party shall review its technical regulations to increase their convergence with relevant international standards, taking into account, *inter alia*, any new development in the relevant international standards or any change in the circumstances that have given rise to divergences from any relevant international standard.

7. In accordance with its respective rules and procedures and without prejudice to Title II [Good Regulatory Practices and regulatory cooperation], where developing major technical regulations which may have a significant effect on trade, each Party shall ensure that procedures exist that allow persons to express their opinion in a public consultation process, except where urgent problems of safety, health, environment or national security arise or threaten to arise. Each Party shall allow persons of the other Party to participate to such consultation in terms no less favourable than those accorded to its own nationals, and make the results of that consultation process public.

#### Article TBT.5: Standards

1. Each Party shall encourage the standardising bodies established within its territory, as well as the regional standardising bodies of which a Party or the standardising bodies established in its territory are members:

- (a) to participate, within the limits of their resources, in the preparation of international standards by relevant international standardising bodies;
- (b) to use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems;
- (c) to avoid duplication of, or overlap with the work of international standardising bodies;
- (d) to review national and regional standards not based on relevant international standards at regular intervals, with a view to increasing their convergence with relevant international standards;

---

<sup>4</sup> G/TBT/9, 13 November 2000, para. 20 and Annex 4.

- (e) to cooperate with the relevant standardising bodies of the other Party in international standardisation activities. That cooperation may be undertaken in the international standardising bodies or at regional level;
- (f) to foster bilateral cooperation between them and the standardising bodies of the other Party.

2. The Parties shall exchange information on:

- (a) their respective use of standards in support of technical regulations;
- (b) their respective standardisation processes, and the extent of use of international, regional or sub-regional standards as a basis for their national standards.

3. Where standards are rendered mandatory, through incorporation or reference, in a draft technical regulation or conformity assessment procedure, the transparency obligations set out in Article TBT 7 [Transparency] of this Chapter and in Articles 2 or 5 of the TBT Agreement shall be fulfilled.

#### Article TBT.6: Conformity assessment

1. Article TBT 4 [Technical regulations] of this Chapter concerning the preparation, adoption and application of technical regulations shall also apply to conformity assessment procedures, *mutatis mutandis*.

2. Where a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:

- (a) select conformity assessment procedures proportionate to the risks involved as determined on the basis of a risk-assessment;
- (b) consider as proof of compliance with technical regulations the use of supplier's declaration of conformity, i.e. a declaration of conformity issued by the manufacturer on his sole responsibility and excluding mandatory third-party assessment, as assurance of conformity among the options for showing compliance with technical regulations;
- (c) where requested by the other Party, provide information on the criteria used to select the conformity assessment procedures for specific products.

3. Where a Party requires third party conformity assessment as a positive assurance that a product conforms with a technical regulation and it has not reserved this task to a governmental body as specified in paragraph 4, it shall:

- (a) preferentially use accreditation, to be operated as a public authority activity and on a not-for-profit basis, to qualify conformity assessment bodies;
- (b) use relevant international standards for accreditation and conformity assessment;
- (c) encourage accreditation bodies and conformity assessment bodies located within its territory to join any relevant functioning international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;
- (d) ensure that economic operators have a choice amongst the conformity assessment bodies designated by the authorities of a Party for a particular product or set of products;

- (e) ensure that conformity assessment bodies are independent of manufacturers, importers and economic operators in general and that there are no conflicts of interest between accreditation bodies and conformity assessment bodies;
- (f) allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party, and may require subcontractors to meet the same requirements the conformity assessment body must meet to perform such testing or inspections itself; and
- (g) publish in a single website a list of the bodies that it has designated to perform such conformity assessment and the relevant information on the scope of each such body's designation.

4. Nothing in this Article shall preclude a Party from requiring that conformity assessment in relation to specific products is performed by its specified government authorities. In such cases, the Party shall:

- (a) limit the conformity assessment fees to the approximate cost of the services rendered and, upon the request of an applicant for conformity assessment, explain how any fees it imposes for such conformity assessment are limited to the approximate cost of services rendered; and
- (b) make publicly available the conformity assessment fees.

5. Notwithstanding paragraphs 2 to 4, each Party shall continue to accept supplier's declaration of conformity as proof of compliance with their technical regulations in those product areas where they do so at the end of the transition period under the Withdrawal Agreement.

6. For information purposes, each Party shall publish and maintain a list of the product areas referred to in paragraph 5 together with the references to the applicable technical regulations.

7. Notwithstanding paragraph 5, either Party may introduce requirements for mandatory third party testing or certification for the products referred to in paragraph 5, provided that such requirements are justified on grounds of legitimate public policy objectives and are proportionate to the purpose of giving the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

8. The Party proposing to introduce the conformity assessment procedures referred to in paragraph 7 shall notify the other Party at an early stage and take the comments of the other Party into account in devising any such conformity assessment procedure.

#### Article TBT.7: Transparency

1. Except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise, each Party shall allow the other Party to provide written comments to notified proposed technical regulations and conformity assessment procedures within a period of at least 60 days from the date of the transmission of a notification of such regulations or procedures to the WTO Central Registry of Notifications. A Party shall give positive consideration to a reasonable request to extend that comment period.

2. In case the notified text is not in one of the official WTO languages, the notifying Party shall provide a detailed and comprehensive description of the content of the measure in the WTO notification format.

3. If a Party receives written comments on its proposed technical regulation or conformity assessment procedure from the other Party, it shall:
  - (a) if requested by the other Party, discuss the written comments with the participation of its competent regulatory authority, at a time where they can be taken into account; and
  - (b) reply in writing to the comments no later than the date of publication of the technical regulation or conformity assessment procedure.
4. Each Party shall publish on a website its responses to the comments it receives following the notification referred to in paragraph 1 no later than on the date of publication of the adopted technical regulation or conformity assessment procedure.
5. Each Party shall, where requested by the other Party, provide information regarding the objectives of, legal basis and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.
6. Each Party shall ensure that the technical regulations and conformity assessment procedures it has adopted are published on a website free of charge.
7. Each Party shall provide information on the adoption and the entry into force of technical regulations or conformity assessment procedures and the adopted final texts through an addendum to the original notification to the WTO.
8. Each Party shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for economic operators of the other Party to adapt. "Reasonable interval" means a period at least 6 months, unless this would be ineffective in fulfilling the legitimate objectives pursued.
9. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period set out in paragraph 1, to extend the period of time between the adoption of the technical regulation and its entry into force, except where the delay would be ineffective in fulfilling the legitimate objectives pursued.

#### Article TBT.8: Marking and labelling

1. The technical regulations of a Party may include or address exclusively mandatory marking or labelling requirements. In such cases, the principles of Article 2.2 of the TBT Agreement apply to these technical regulations.
2. Where a Party requires mandatory marking or labelling of products, all of the following conditions shall apply:
  - (a) it shall only require information which is relevant for consumers or users of the product or information that indicates the product's conformity with the mandatory technical requirements;
  - (b) it shall not require any prior approval, registration or certification of the labels or markings of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements unless it is necessary in view of the risk of the products to human, animal or plant health or life, the environment or national security;

- (c) where it requires the use of a unique identification number by economic operators, it shall issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (d) unless the elements listed below in points (i)-(iii) are misleading, contradictory or confusing in relation to the information required in the importing Party of the goods, the importing Party shall permit:
  - (i) information in other languages in addition to the language required in the importing Party of the goods;
  - (ii) internationally-accepted nomenclatures, pictograms, symbols or graphics; and
  - (iii) additional information to that required in the importing Party of the goods;
- (e) it shall accept that labelling, including supplementary labelling and/or corrections to labelling, take place, in customs warehouses or other designated areas in the country of import as an alternative to labelling in the country of origin;
- (f) it shall endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

Article TBT.9: Cooperation on market surveillance and non-food product safety and compliance

1. The Parties recognise the importance of cooperation on market surveillance, compliance and the safety of non-food products for the facilitation of trade and for the protection of consumers and other users, and of building mutual trust based on shared information.
2. To guarantee independent and impartial functioning of market surveillance, the Parties shall ensure:
  - (a) the separation of market surveillance functions from conformity assessment functions;
  - (b) the absence of any interests that would affect the impartiality of market surveillance authorities in the performance of control or supervision of economic operators.
3. The Parties shall cooperate and exchange information in the area of non-food product safety and compliance, which may include in particular the following:
  - (a) market surveillance and enforcement activities and measures;
  - (b) risk assessment methods and product testing;
  - (c) coordinated product recalls or other similar actions;
  - (d) scientific, technical, and regulatory matters, aiming to improve non-food product safety and compliance;
  - (e) emerging issues of significant health and safety relevance;
  - (f) standardisation-related activities;
  - (g) exchange of officials.



4. The Parties may establish an arrangement on the regular exchange of information between the RAPEX alert system, or its successor, and the [*Product Safety UK Recalls*] system, or its successor, on the safety of non-food consumer products and related preventive, restrictive and corrective measures.

The arrangement shall set out the modalities under which:

- (a) the Union provides the United Kingdom with selected information from its RAPEX alert system, or its successor, with respect to consumer products as referred to in Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety or its successor;<sup>5</sup>
- (b) the United Kingdom provides the Union with selected information from the [*Product Safety UK Recalls*] system, or its successor, including information providing an early warning on preventive, restrictive and corrective measures with respect to consumer products as referred to in the [*General Product Safety Regulations 2005*];
- (c) the Parties shall inform each other of any follow-up actions and measures taken in response to the information exchanged.

5. The Parties may establish an arrangement on the regular exchange of information, including by electronic means, on measures taken on non-compliant non-food products, other than those covered by paragraph 4.

6. Each Party shall use the information obtained pursuant to paragraphs 3, 4 and 5 for the sole purpose of the protection of consumers, health, safety or the environment.

7. Each Party shall treat the information obtained pursuant to paragraphs 3, 4 and 5 as confidential.

8. The arrangements referred to in paragraphs 4 and 5 shall specify the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.

9. For the purposes of this Article, “Market surveillance” means activities conducted and measures taken by public authorities including those taken in cooperation with economic operators, on the basis of procedures of a Party to enable that Party to monitor or address compliance or safety of products with the requirements set out in its laws and regulations.

#### Article TBT.10: Technical discussions

1. If a Party considers that a draft or proposed technical regulation or conformity assessment procedure of the other Party might significantly adversely affect trade between the Parties, it may request technical discussions on the matter. The request shall be made in writing to the other Party and shall identify:

- (a) the measure at issue;
- (b) the provisions of this Chapter to which the concerns relate;
- (c) the reasons for the request, including a description of the requesting Party’s concerns regarding the measure.

---

<sup>5</sup> OJ L 11, 15.1.2012, p.12.

2. A Party shall deliver its request to the contact point of the other Party designated pursuant to Article TBT.11 [Contact points].

3. At the request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person or via video or teleconference, within 60 days of the date of the request and shall endeavour to resolve the matter as expeditiously as possible. If a requesting Party believes that the matter is urgent, it may request that any meeting take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to such a request.

#### Article TBT.11: Contact Point

[Placeholder]

### Chapter five: Customs and trade facilitation

#### Article CUSTMS.1: Objective

The objectives of this Chapter are:

- (a) to reinforce cooperation between the Parties in the area of customs and trade facilitation and maintain a high level of convergence of their customs legislation and practices with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfil the objectives of promoting trade facilitation while ensuring effective customs controls and enforcement of customs legislation and trade related laws and regulations, the proper protection of security and safety of citizens as well as the respect of prohibitions and restrictions and financial interests of the Parties;
- (b) to reinforce administrative cooperation between the Parties in the field of VAT and mutual assistance of claims related to taxes and duties;
- (c) to ensure that the legislation of each Party is non-discriminatory and that customs procedures are based upon the use of modern methods and effective controls to combat fraud and to promote legitimate trade;
- (d) to ensure that legitimate public policy objectives, including in relation to security, safety and fight against fraud are not compromised in any way.

#### Article CUSTMS.1a: Definitions

[PLACEHOLDER]

#### Article CUSTMS.2: Customs cooperation and mutual administrative assistance

1. The relevant authorities of the Parties shall cooperate on customs matters to ensure that the objectives set out in Article CUSTMS.1 [Objective] are attained. For the purpose of Title IV of Part Two [Trade in goods], the Convention of 20 May 1987 on the Simplification of Formalities in Trade in Goods shall apply.

2. The Parties shall develop cooperation, including in the following areas:

- (a) exchanging information concerning customs legislation, its implementation, and customs procedures; particularly in the following areas:
  - (i) simplification and modernisation of customs procedures;

- (ii) facilitation of transit movements and transshipment;
  - (iii) relations with the business community;
  - (iv) supply chain security and risk management.
- (b) working together on the customs-related aspects of securing and facilitating the international trade supply chain in accordance with the Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) of the World Customs Organization (“WCO”);
- (c) considering developing joint initiatives relating to import, export and other customs procedures including technical assistance, as well as towards ensuring an effective service to the business community;
- (d) strengthening their cooperation in the field of customs in international organisations such as the World Trade Organization (“WTO”) and the WCO, and exchanging information and/or discussing with a view to establishing where possible common positions in those international organisations and in UNCTAD, UNECE ;
- (e) endeavouring to harmonize their data requirements for import, export and other customs procedures by implementing common standards and data elements in accordance with the World Customs Organization (WCO) Data Model;
- (f) strengthening their cooperation on risk management techniques, including sharing best practices, and where appropriate, risk information and control results. Where relevant and appropriate, the Parties shall also consider mutual recognition of risk management techniques, risk standards and controls and customs security measures.
- (g) establishing, where relevant and appropriate, mutual recognition of Authorised Economic Operator programmes and customs controls including equivalent trade facilitation measures;
- (h) fostering cooperation between customs and other government authorities or agencies in relation to Authorised Economic Operator programmes. This collaboration may be achieved, inter alia, by agreeing on the highest standards, facilitating access to benefits and minimising unnecessary duplication;
- (i) enforcing intellectual property rights by the customs authorities, including exchanging information and best practices in customs operations focusing in particular in intellectual property rights enforcement;
- (j) maintaining harmonised customs procedures [including the application of a single administrative document for customs declaration]
- (k) exchanging, where relevant and appropriate, through a structured and recurrent communication between the customs authorities of the Parties, certain categories of customs-related information for specific purposes, namely improving risk management and the effectiveness of customs controls, targeting goods at risk in terms of revenue collection or safety and security, and facilitating legitimate trade ; under the modalities to be agreed, subject to the respect of the confidentiality of sensitive [data and the protection of personal data] in accordance with Union legislation; such exchange shall be without prejudice to exchanges of information that may take place between the Parties pursuant to the Protocol on Mutual Administrative Assistance in Customs Matters.

3. Without prejudice to other forms of cooperation envisaged in this Agreement, the customs authorities of the Parties shall provide each other with mutual administrative assistance in the matters covered by this Chapter in accordance with the Protocol CMAACM on mutual administrative assistance in customs matters.

4. Any exchange of information between the Parties under this Chapter shall be *mutatis mutandis* subject to the confidentiality and protection of information set out in the Protocol on mutual administrative assistance in customs matters, as well as any confidentiality and privacy requirements set out in the legislation of the Parties. [NB: may need review to ensure consistency with CMAACM provisions].

#### Article CUSTMS.3: Customs and other trade related legislation and procedures

1. The Parties shall ensure that their respective customs provisions and procedures:

- (a) are consistent with international instruments and standards applicable in the area of customs and trade, including the WTO Trade Facilitation Agreement, the substantive elements of the Revised Kyoto Convention on the Simplification and Harmonisation of Customs Procedures, the International Convention on the Harmonised Commodity Description and Coding System, as well as the Framework of Standards to Secure and Facilitate Global Trade and the Customs Data Model of the WCO;
- (b) provide the protection and facilitation of legitimate trade taking into account the evolution of trade practices through effective enforcement including in case of breaches of its laws and regulations and duty evasion and smuggling and through ensuring compliance of legislative requirements;
- (c) are based on legislation that is proportionate and non-discriminatory, avoids unnecessary burdens on economic operators, provides for further facilitation for operators with high levels of compliance, including favourable treatment with respect to customs controls prior to the release of goods, and ensures safeguards against fraud and illicit or damageable activities whilst ensuring high level of protection of security and safety of citizens as well as the respect of prohibitions and restrictions and financial interests of the parties; and
- (d) contain rules that ensure that any penalty imposed for breaches of customs regulations or procedural requirements is proportionate and non-discriminatory and that its application shall not unduly delay the release of the goods.

2. Each Party should periodically review its legislation and customs procedures. Customs procedures should also be applied in a manner that is predictable, consistent and transparent.

3. In order to improve working methods, as well as to ensure non-discrimination, transparency, efficiency, integrity and accountability of operations, each Party shall:

- (a) simplify and review requirements and formalities wherever possible with a view to the rapid release and clearance of goods; and
- (b) work towards the further simplification and standardisation of data and documentation required by customs and other agencies, promote coordination between all border agencies, both internally and across borders, to facilitate border-crossing processes and enhance control, taking into account joint border controls where feasible and appropriate.

4. Each Party shall maintain or establish a Committee on Trade Facilitation to facilitate both domestic coordination and the implementation of the provision of this Agreement.

#### Article CUSTMS.4: Release of goods

Each Party shall adopt or maintain customs procedures that

- (a) provide for the prompt release of goods within a period that is no longer than necessary to ensure compliance with its laws and regulations;
- (b) provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable the release of goods on arrival;
- (c) allow for the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met. As a condition for such release, each Party may require a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations. Such guarantee shall not be greater than the amount the Party requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required.

#### Article CUSTMS.5: Simplified customs procedures

1. Each Party shall work towards simplification of its requirements and formalities for customs procedures in order to reduce the time and costs thereof for traders or operators, including small and medium-sized enterprises.
2. Each Party shall adopt or maintain measures allowing traders or operators fulfilling criteria specified in its laws and regulations to benefit from further simplification of customs procedures. Such measures may include customs declarations containing a reduced set of data or supporting documents, or periodical customs declarations for the determination and payment of customs duties and taxes covering multiple imports within a given period, after the release of those imported goods.

#### Article CUSTMS.6: Transit and transshipment

1. For the purposes of this Agreement *Article GOODS.4 [Freedom of Transit]* of the Trade in Goods Chapter], the Convention of 20 May 1987 on a common transit procedure shall apply.
2. Each Party shall ensure the facilitation and effective control of transshipment operations and transit movements through their respective territories.
3. Each Party shall promote and implement regional transit arrangements with a view to facilitating trade in the respect of the Convention of 20 May 1987 on a common transit procedure.
4. Each Party shall ensure cooperation and coordination between all concerned authorities and agencies in their respective territories to facilitate traffic in transit.
5. Each Party shall allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

#### Article CUSTMS.7: Risk management

1. Each Party shall adopt or maintain a risk management system for customs controls with a view to prevent the likelihood and the impact of an event, which would prevent the correct application of customs legislation, compromise the financial interest of the parties and pose a threat

to the security and safety of the Parties and their residents, to human, animal or plant health, to the environment or to consumers.

2. Customs controls, other than random checks, shall primarily be based on risk analysis using electronic data-processing techniques with the purpose of identifying and evaluating the risks and developing the necessary counter measures on the basis of criteria developed by the parties or, where available, at international level.

3. Each Party shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

4. Each Party shall concentrate customs controls and other relevant border controls on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.

5. Each Party shall base risk management on assessment of risk through appropriate selectivity criteria.

6. Each Party shall agree on conditions and modalities for the exchange of risk information, risk analysis results and the establishment of common risk criteria and standards, control measures and priority controls areas.

#### Article CUSTMS.8: Post-clearance audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Party shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

3. The Parties acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

4. The Parties shall use the result of post-clearance audit for risk management purposes.

#### Article CUSTMS.9: Authorised economic operators

1. Each Party shall establish or maintain a partnership programme for operators who meet specified criteria, hereinafter referred to as Authorised Economic Operators.

2. The specified criteria to qualify as Authorised Economic Operators shall be related to compliance with requirements established by the Parties' laws, regulations or procedures. The specified criteria, which shall be published, may include:

(a) the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant;

(b) the demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls;

- (c) financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned;
- (d) proven competences or professional qualifications directly related to the activity carried out;
- (e) appropriate security and safety standards, which shall be considered as fulfilled where the applicant demonstrates that he or she maintains appropriate measures to ensure the security and safety of the international supply chain including in the areas of physical integrity and access controls, logistical processes and handling of specific types of goods, personnel and identification of his or her business partners.

3. The specified criteria to qualify as an Authorised Economic Operator shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail. They shall allow the participation of small and medium-sized enterprises.

4. The partnership programme shall include the following benefits:

- (a) fewer physical and document-based controls, as appropriate;
- (b) prior notification in case of selection for physical or other customs controls;
- (c) priority treatment of consignments if selected for controls;
- (d) choice of the place of controls;
- (e) certain simplifications in line with the applicable customs legislation.

#### Article CUSTMS.10: Publication and availability of information

1. Each Party shall ensure that its customs legislation and other trade-related laws and regulations as well as its general administrative procedures and relevant information of general application related to trade are published and readily available to any interested person in an easily accessible manner, including, as appropriate, through the Internet.

2. Each Party shall promptly publish new legislation and general procedures related to customs and trade facilitation issues as early as possible prior to the entry into force of any such legislation and procedures, as well as changes to and interpretations of such legislation and procedures. This shall include:

- (a) relevant notices of administrative nature;
- (b) importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
- (c) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (d) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- (e) rules for the classification or valuation of products for customs purposes;

- (f) laws, regulations and administrative rulings of general application relating to rules of origin;
- (g) import, export or transit restrictions or prohibitions;
- (h) penalty provisions against breaches of import, export or transit formalities;
- (i) appeal procedures;
- (j) agreements or parts thereof with any country or countries relating to importation, exportation or transit;
- (k) procedures relating to the administration of tariff quotas;
- (l) hours of operation and operating procedures for customs offices at ports and border crossing points; and
- (m) points of contact for information enquiries.

2. Each Party shall ensure there is a reasonable time period between the publication of new or amended legislation, procedures and fees or charges and their entry into force.

3. Each Party shall make available, and keep updated, the following through the internet:

- (a) a description of its importation, exportation and transit procedures, including appeal procedures, informing of the practical steps needed to import and export, and for transit;
- (b) the forms and documents required for importation into, exportation from, or transit through the territory of that Party; and
- (c) contact information on enquiry points.

4. Each Party shall establish or maintain one or more enquiry points to answer within a reasonable time enquiries of governments, traders and other interested parties on customs and other trade-related matters. The Parties shall not require the payment of a fee for answering enquiries.

#### Article CUSTMS.11: Advance rulings

1. Each Party, through its customs authorities, shall issue advance rulings upon application by economic operators setting forth the treatment to be accorded to the goods concerned. Such rulings shall be issued in writing or in electronic format in a time bound manner and shall contain all necessary information in accordance with the legislation of the issuing Party.

2. Advance rulings shall be valid for a period of at least three years from the start date of its validity unless the decision in the ruling no longer conforms to the law or the facts or circumstances supporting the original ruling have changed.

3. A Party may refuse to issue an advance ruling if the question raised in the application is the subject to an administrative or judicial review, or if the application does not relate to any intended use of the advance ruling or any intended use of a customs procedure. If a Party declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

4. Each Party shall publish, at least:



- (a) the requirements for applying for an advance ruling, including the information to be provided and the format;
- (b) the time period by which it will issue an advance ruling; and
- (c) the length of time for which the advance ruling is valid.

5. If a Party revokes, modifies, invalidates or annuls an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. If the Party revokes, modifies, invalidates or annuls an advance ruling with retroactive effect, it may only do so if the ruling was based on incomplete, incorrect, false or misleading information.

6. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it. The Party may provide that the advance ruling be binding on the applicant.

7. Each Party shall provide, upon written request from the holder, a review of the advance ruling or of the decision to amend, revoke or invalidate it.

8. Each Party shall make publicly available information on advance rulings, taking into account the need to protect personal and commercially confidential information.

9. Advance rulings shall be issued with regard to:

- (a) the tariff classification of goods;
- (b) the origin of goods; and
- (c) any other matter the Parties may agree upon.

#### Article CUSTMS.12: Customs brokers

The Parties agree that their respective customs provisions and procedures shall not require the mandatory use of customs brokers (or other agent). Each Party shall notify and publish its measures on the use of customs brokers. The Parties shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

#### Article CUSTMS.13: Pre-shipment inspections

The Parties shall not require the mandatory use of pre-shipment inspections as defined in the WTO Agreement on Pre-shipment Inspection, or any other inspection activity performed at destination, before customs clearance, by private companies.

#### Article CUSTMS.14: Review and appeal

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against the administrative actions, rulings and decisions of customs or other competent authorities affecting import or export of goods or goods in transit.

2. Appeal or review shall include:

- (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and/or
- (b) a judicial appeal or review of the decision.

3. Each Party shall ensure that, in a case where the decision on appeal or review under subparagraph 2 (a) is not given within the period of time provided for in its laws and regulations or without undue delay, the petitioner has the right to further administrative or judicial appeal or review or any other recourse to the judicial authority according to the legislation of the Parties.

4. Each Party shall ensure that the petitioner is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.

#### Article CUSTMS.15: Relations with the business community

The Parties agree:

1. on the need for timely and regular consultations with trade representatives on legislative proposals and general procedures related to customs and trade facilitation issues. To that end, appropriate consultation between administrations and the business community shall be established by each Party; and
2. to ensure that their respective customs and related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.

#### Article CUSTMS.16: Temporary admission

1. For the purposes of this Article, the term “temporary admission” means the customs procedure under which certain goods (including means of transport) can be brought into a customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character. Such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

2. Each Party shall grant temporary admission, with total conditional relief from import duties and taxes and without application of import restrictions or prohibitions of economic character, as provided for in its laws and regulations, to the following goods:

- (a) goods for display or use at exhibitions, fairs, meetings or similar events (goods intended for display or demonstration at an event; goods intended for use in connection with the display of foreign products at an event; equipment including interpretation equipment, sound and image recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses); products obtained incidentally during the event from temporarily imported goods, as a result of the demonstration of displayed machinery or apparatus;
- (b) professional equipment (equipment for the press, for sound or television broadcasting which is necessary for representatives of the press, of broadcasting or television organizations visiting the territory of another country for purposes of reporting, in order to transmit or record material for specified programmes; cinematographic equipment necessary for a person visiting the territory of another country in order to make a specified film or films; any other equipment necessary for the exercise of the calling, trade or profession of a person visiting the territory of another country to perform a specified task, insofar as it is not to be used for the industrial manufacture or packaging of goods or (except in the case of hand tools) for the exploitation of natural resources, for the construction, repair or maintenance of buildings or for earth moving and like projects; ancillary apparatus for the equipment mentioned above, and accessories therefor); component parts imported for repair of professional equipment temporarily admitted;

- (c) goods imported in connection with a commercial operation but whose importation does not in itself constitute a commercial operation (packings which are imported filled for re-exportation empty or filled, or are imported empty for re-exportation filled; containers, whether or not filled with goods, and accessories and equipment for temporarily admitted containers, which are either imported with a container to be re-exported separately or with another container, or are imported separately to be re-exported with a container and component parts intended for the repair of containers granted temporary admission; pallets; samples; advertising films; other goods imported in connection with a commercial operation);
- (d) goods imported in connection with a manufacturing operation (matrices, blocks, plates, moulds, drawings, plans, models and other similar articles; measuring, controlling and checking instruments and other similar articles; special tools and instruments, imported for use during a manufacturing process); replacement means of production (instruments, apparatus and machines made available to a customer by a supplier or repairer, pending the delivery or repair of similar goods);
- (e) goods imported exclusively for educational, scientific or cultural purposes (scientific equipment, pedagogic material, welfare material for seafarers, and any other goods imported in connection with educational, scientific or cultural activities); spare parts for scientific equipment and pedagogic material which has been granted temporary admission; tools specially designed for the maintenance, checking, gauging or repair of such equipment;
- (f) personal effects (all articles, new or used, which a traveller may reasonably require for his or her personal use during the journey, taking into account all the circumstances of the journey, but excluding any goods imported for commercial purposes); goods imported for sports purposes (sports requisites and other articles for use by travellers in sports contests or demonstrations or for training in the territory of temporary admission);
- (g) tourist publicity material (goods imported for the purpose of encouraging the public to visit another foreign country, in particular in order to attend cultural, religious, touristic, sporting or professional meetings or demonstrations held there);
- (h) goods imported for humanitarian purposes (medical, surgical and laboratory equipment and relief consignments, such as vehicles and other means of transport, blankets, tents, prefabricated houses or other goods of prime necessity, forwarded as aid to those affected by natural disaster and similar catastrophes); and
- (i) animals imported for specific purposes (dressage, training, breeding, shoeing or weighing, veterinary treatment, testing (for example, with a view to purchase), participation in shows, exhibitions, contests, competitions or demonstrations, entertainment (circus animals, etc.), touring (including pet animals of travellers), exercise of function (police dogs or horses; detector dogs, dogs for the blind, etc.), rescue operations, transhumance or grazing, performance of work or transport, medical purposes (delivery of snake poison, etc.).

3. Each Party shall, for the temporary admission of the goods referred to in paragraph 2 and regardless of their origin, accept Admission Temporary Admission (A.T.A.) carnets issued in the other Party, endorsed there and guaranteed by an association forming part of the international guarantee chain, certified by the competent authorities and valid in the customs territory of the importing Party.

Article CUSTMS.17: Administrative cooperation in VAT and mutual assistance for recovery of taxes and duties

The competent authorities of the Parties shall cooperate with each other to ensure compliance with VAT legislation and in recovering claims relating to taxes and duties in accordance with the Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties

Article CUSTMS.18: Measures and practical arrangements for implementing this Chapter and the Protocols to this Chapter

1. The Specialised Committee on Customs Cooperation shall conclude regular consultations and monitoring of implementation and administration of this Chapter and the issues of technical assistance in customs matters, rules of origin, enforcement of intellectual property rights, and the provisions on fees and charges, temporary admission and repaired goods, as well as mutual administrative assistance in customs matters.

2. The Specialised Committee on Customs Cooperation may adopt measures and practical arrangements for implementing this Chapter and Protocols X (rules of origin) and Y (mutual administrative assistance on customs matters) to this Agreement , including on exchange of customs-related information, mutual recognition of risk management techniques, risk standards, security controls and trade partnership programmes as well as other trade facilitation measures and on maintaining common approaches to customs valuation.

3. The Specialised Committee on Administrative Cooperation in VAT and recovery of taxes and duties may adopt measures and practical arrangements for implementing Article CUSTMS.17 and ensure the proper functioning and implementation of the Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties.

Article CUSTMS.19: Amendments Annexes and Protocols to this Chapter

The Specialised Committee on Customs Cooperation may amend Chapter two [Rules of origin] and its Annexes, as well as the Protocol on cooperation and mutual administrative assistance in customs matters.

The Specialised Committee on Administrative Cooperation in VAT and recovery of taxes and duties may amend the Protocol [VAT and Recovery].

## TITLE V: FISHERIES

### Chapter one: Initial provisions

#### Article FISH.1: Objectives

The aim of this Title is to enable the Parties to manage the fisheries and shared stocks and to cooperate with a long-term perspective in light of the following common objectives:

- (a) upholding clear and stable rules and existing reciprocal conditions on access to waters and resources;
- (b) ensuring that fishing activities are environmentally sustainable in the long term and contribute to achieving economic, social and employment benefits;
- (c) applying and maintaining the maximum sustainable yield exploitation rate in order to restore and maintain populations of harvested species at levels which can produce the maximum sustainable yield;
- (d) ensuring the rapid recovery of stocks below Blim to levels which can produce the maximum sustainable yield;
- (e) cooperating on the development of measures for the conservation, management and regulation of fisheries in a non-discriminatory manner, while preserving the regulatory autonomy of the Parties;
- (f) eliminating discards by avoiding and reducing unwanted catches, and by ensuring that all catches are landed;
- (g) promoting the protection of marine biological resources and their environments and coastal areas;
- (h) applying the ecosystem-based approach to fisheries management and ensuring that negative impacts of fishing activities on the marine ecosystem are minimised;
- (i) following a precautionary approach to fisheries management;
- (j) ensuring cooperation on data collection and scientific advice to support stock assessments;
- (k) ensuring cooperation on monitoring, control and surveillance activities, including the fight against illegal unreported and unregulated fisheries;
- (l) establishing management measures in accordance with the best available scientific advice;
- (m) upholding the existing fishing activities;
- (n) contributing to a fair standard of living for those who depend on fishing activities, bearing in mind coastal fisheries and socio-economic aspects;
- (o) ensuring a level playing field.

#### Article FISH.2: Definitions

For the purposes of this Title, the following definitions apply:

- (a) "Blim" means the spawning stock biomass reference point provided for in the best available scientific advice, in particular by International Council for the Exploitation of the Sea (ICES) or any other international scientific body recognised by both Parties, below which there may be reduced reproductive capacity;
- (b) "Catch limit" means, as appropriate, either a quantitative limit on catches of a fish stock or group of fish stocks over a given period, or a quantitative limit on landings of a fish stock or group of fish stocks over a given period;
- (c) "Discards" means catches that are returned to the sea;
- (d) "Ecosystem-based approach to fisheries management" means an integrated approach to managing fisheries within ecologically meaningful boundaries which seeks to manage the use of natural resources, taking account of fishing and other human activities, while preserving both the biological wealth and the biological processes necessary to safeguard the composition, structure and functioning of the habitats of the ecosystem affected, by taking into account the knowledge and uncertainties regarding biotic, abiotic and human components of ecosystems;
- (e) "Fishing activity" means searching for fish, shooting, setting, towing, hauling of a fishing gear, taking catch on board, transshipping, retaining on board, processing on board, transferring, landing of fish and fishery products;
- (f) "Fishing vessel" means any vessel equipped for the commercial exploitation of marine biological resources;
- (g) "Marine biological resources" means available and accessible living marine aquatic species, including anadromous and catadromous species during their marine life;
- (h) "Maximum Sustainable Yield (MSY)" means the highest theoretical equilibrium yield that can be taken continuously on average from a stock under existing environmental conditions without significantly affecting the reproduction process; within this equilibrium yield the MSY point value refers to the highest point theoretical equilibrium yield;
- (i) "MSY Btrigger" means the spawning stock biomass reference point, or, in the case of Norway lobster, abundance reference point provided for in the best available scientific advice, in particular from ICES or a similar independent scientific body, below which specific and appropriate management action is to be taken to ensure that exploitation rates in combination with natural variations rebuild stocks above levels capable of producing MSY in the long term;
- (j) "Precautionary approach to fisheries management" means an approach according to which the absence of adequate scientific information should not justify postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment;
- (k) "Stock" means a marine biological resource that occurs in a given management area from which catches are taken in a fishery;
- (l) "Technical measure" means a measure that regulates the composition of catches by species and size and the impacts on components of the ecosystems resulting from fishing activities by establishing conditions for the use and structure of fishing gear and restrictions on access to fishing areas;

- (m) “Union waters” means, by derogation from Article FINPROV.1(1) [Territorial scope], the waters under the sovereignty or jurisdiction of the Member States adjacent to their European territories;
- (n) “United Kingdom waters” means the waters under the sovereignty or jurisdiction of the United Kingdom as well as, by derogation from Article FINPROV.1(3) (b) [Territorial scope], the waters adjacent to the Channel islands and the Isle of Man;
- (o) “Union fishing vessel” means a fishing vessel flying the flag of a Member State of the Union and registered in the Union;
- (p) “United Kingdom fishing vessel” means a fishing vessel flying the flag of the United Kingdom and registered in the United Kingdom.

## Chapter two: Conservation and Sustainable exploitation of fisheries resources

### Article FISH.3: Long-term strategies for conservation and management

1. The Parties may, by way of joint records, adopt joint long-term strategies for conservation and management as the basis for the setting of fishing opportunities and other management measures.
2. Long-term strategies shall provide for the conservation and sustainable exploitation of marine biological resources and the management of fisheries in pursuit of the objectives set out in Article FISH.1 [Objectives].
3. Long-term strategies shall contain, *inter alia*, the identification of target and by-catch stocks, the establishment of stock exploitation targets in line with the best available scientific advice on MSY or the precautionary approach where MSY reference points are not available, safeguard and stability provisions, provisions for application of specific technical conservation measures and provisions for eliminating discards.

### Article FISH.4: Eliminating discards

1. All catches of stocks referred to in ANNEX FISH-1 caught during fishing activities in Union waters and United Kingdom waters as referred to in ANNEX FISH-3 shall be brought and retained on board the fishing vessels, recorded, landed and counted against the quota where applicable.
2. Each Party may establish derogations from paragraph 1.
3. The derogations referred to in paragraph 2 of this Article shall be based on the best available scientific advice and shall be proportionate, non-discriminatory and effective to attain the objectives set out in Article FISH.1.

### Article FISH.5: Technical measures

1. The Parties shall apply technical measures for the conservation of marine biological resources, as applicable to each Party on 31 December 2020.
2. New technical measures, or changes to existing technical measures shall be based on the best available scientific advice and shall be proportionate, non-discriminatory and effective to attain the objectives set out in Article FISH.1 [Objectives].

3. If a Party intends to introduce new, or change existing technical measures, it shall notify such measure accompanied by an explanatory memorandum to the other Party, it shall notify the other Party, at least four months before the intended adoption of the measure.

4. If the notified Party considers that these draft measures are liable to adversely affect its fishing vessels, it may request consultations on the measure in the Specialised Committee on Fisheries within [7] calendar days following the receipt of notification. The consultation shall last no longer than three months from the date of the consultation request.

#### Article FISH.6: Emergency measures

1. In case of a serious threat to the conservation of marine biological resources, or to the marine ecosystem relating to fishing activities, where immediate action is required, the Party concerned may adopt emergency measures to address the specific threat.

2. Emergency measures referred to in paragraph 1 shall be proportionate, non-discriminatory and effective to attain the objectives set out in Article FISH.1 [Objectives] and apply for a maximum period of six months, with the possibility to extend the application of these measures for a further period of maximum six months.

3. If a Party intends to introduce an emergency measure, it shall notify such measure accompanied by an explanatory memorandum to the other Party, at least 15 calendar days before the intended adoption of the measures.

4. If the notified Party considers that these draft measures are liable to adversely affect its fishing vessels, it may request a consultation on the measures in the Specialised Committee on Fisheries within [7] calendar days following the receipt of notification. The consultation shall last no longer than one month from the date of request for a consultation.

5. The application of the emergency measure shall be suspended during the consultation referred to in paragraph 4.

#### Article FISH.7: Best available scientific advice

1. The Parties shall ensure the scientific assessment of the state of the marine biological resources.

2. With a view to obtaining the best available scientific advice on these resources, the Parties shall consult ICES or any other international scientific body recognised by both Parties.

#### Article FISH.8: Data requirements for fisheries management

The Parties shall cooperate to ensure consistent methods for the collection of biological, environmental, technical, and socio-economic data necessary for the management of the marine biological resources.

#### Article FISH.9: Measures to ensure compliance

1. Each Party shall take all necessary measures to ensure respect by operators with the provisions of this Title.

2. The Parties shall establish joint control, monitoring and surveillance programmes in order to coordinate and cooperate on control, monitoring and surveillance of fishing activities within Union and United Kingdom waters.



3. The Parties shall exchange electronically all relevant data to facilitate control and enforcement actions, in particular catch, fleet and vessel position data.

### Chapter three: Arrangements on access to waters and resources

#### Article FISH.10: Reciprocal access to waters

1. Each Party shall authorise the fishing vessels of the other Party to engage in fishing activities in its waters in accordance with the provisions set out in ANNEX FISH-3.
2. The authorisation shall cover access to pursue fishing of stocks subject to joint management and all other stocks.
3. Specific conditions set by each Party when authorising access to its waters shall be directly related to the fishing opportunities established pursuant to Article FISH.11 [Fishing opportunities].
4. The Parties shall ensure cooperation between the competent authorities for the proper implementation of this Article, including cooperation on the procedure and timelines for issuing fishing authorisations.

#### Article FISH.11: Fishing opportunities

1. By 31 January of each year, the Parties shall set the agenda for consultations with the aim to agree on fishing opportunities in Union and United Kingdom waters for the following year.
2. The Parties shall establish, by way of agreed records and before 10 December each year, the fishing opportunities for the following year for all stocks listed in ANNEX FISH-I on the basis of the best available scientific advice as provided by ICES or any other international scientific body recognised by both Parties;
  - (a) where relevant, complying with the long-term strategies for conservation and management agreed by the Parties in accordance with Article FISH.3 [Long-term strategies for conservation and management];
  - (b) in accordance with the allocation set out in ANNEX FISH-2.

Fishing opportunities may include catch limits or fishing effort limits for determined periods.

3. Each Party shall set fishing opportunities in accordance with the agreement referred to in paragraph 2.
4. If the Parties have not agreed on the fishing opportunities pursuant to the deadline and modalities stipulated in paragraph 2, they shall immediately resume consultations with the aim to agree on fishing opportunities for the relevant period.
5. In the absence of an agreement as referred to under paragraph 2 and until such agreement is reached, each Party shall immediately, and at the latest by 24 December of the year, set fishing opportunities for the subsequent year as follows:
  - (a) fishing opportunities shall be based on the advised overall level of fishing opportunities for the stock concerned as recommended by ICES, i.e. the level of MSY (point value) or, when MSY advice is not available or when a stock is below MSY Btrigger, the precautionary level as advised; and

(b) the allocation of fishing opportunities for the Party concerned does not exceed the share that would be allocated from the overall level of fishing opportunities established in accordance with point a) to each Party in accordance with ANNEX FISH-2.

6. Each Party shall immediately notify the other Party of the fishing opportunities it has set pursuant to paragraph 5.

#### Article FISH.12: Quota exchanges

1. The Parties may exchange all or part of their allocated fishing opportunities set in accordance with Article FISH.11 [Fishing opportunities].

2. The Parties shall ensure cooperation for the implementation of this Article, including cooperation on the procedures for quota exchanges.

#### Article FISH.13: Remedial measures

1. If a Party considers that the other Party has failed to comply with Articles FISH.10(1) FISH.10(2) or FISH.10(3) [Reciprocal access to waters] or with the fishing opportunities set in accordance with Articles FISH.11(2), FISH.11(3), FISH.11(4) or Article FISH.11(5) [Fishing opportunities] of this Title, it may, after giving notice to the other Party, suspend, in part, or in whole tariff concessions granted under Chapter One of Title IV of Part Two of this Agreement.

2. A suspension of tariff concessions pursuant to paragraph 1 shall not exceed the level equivalent to the nullification or impairment caused by the non-compliance.

3. The suspension of tariff concessions may take effect at the earliest [7] calendar days after the Party has given the other Party notice under paragraph 1. That notification shall identify the measure through which the Party considers that the other Party has failed to comply with Articles FISH.10(1), 10(2), 10(3), 11(2), 11(3), 11(4) or 11(5) of this Title, the date upon which the Party intends to suspend tariff concessions and specify the level of intended suspension of such tariffs.

4. The appropriate remedial measures shall cease to apply when

(a) the Party is satisfied that the other Party is complying with its obligations under Articles FISH.10(1), 10(2), 10(3), 11(2), 11(3), 11(4) or 11(5) of this Title; or

(b) in cases submitted to arbitration, the arbitration panel has decided that the Party has not failed to comply with its obligations under Articles FISH.10(1), 10(2), 10(3), 11(2), 11(3), 11(4) or 11(5) of this Title.

5. A Party shall not invoke the WTO Agreement or any other international agreement to preclude the other Party from suspending obligations under this Article.

## TITLE VI: SERVICES AND INVESTMENT

### Chapter one: General Provisions

#### Article SERVIN.1.1: Objective and scope

1. The Parties affirm their commitment to establish a favourable climate for the development of trade and investment between them.

2. The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, privacy and data protection or the promotion and protection of cultural diversity.

3. This Title does not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party or to measures regarding nationality, citizenship, residence or employment on a permanent basis.

4. This Title shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of its borders and to ensure the orderly movement of natural persons across them, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Title. The sole fact of requiring a visa for natural persons of certain countries and not for those of others shall not be regarded as nullifying or impairing benefits under this Title.

5. This Title does not apply to:

(a) air services or related services in support of air services,<sup>6</sup> other than:

(i) aircraft repair and maintenance services;

(ii) computer reservation system (CRS) services;

(iii) ground handling services;

(iv) the following services provided using a manned aircraft, subject to compliance with the Parties' respective laws and regulations governing the admission of aircrafts to, departure from and operation within, their territory: aerial fire-fighting, flight training, spraying, surveying, mapping, photography, and other airborne agricultural, industrial and inspection services; and

(v) the selling and marketing of air transport services;

(b) audio-visual services;

---

<sup>6</sup> Air services or related services in support of air services include, but are not limited to, the following services: air transportation; services provided by using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services; the rental of aircraft with crew; and airport operation services.

(c) national maritime cabotage<sup>7</sup>, and

(d) internal waterways transport.

6. This Title does not apply to any measure of a Party with respect to public procurement of a good or service purchased for governmental purposes, and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is "covered procurement" within the meaning of Article PPROC.2 (Public Procurement).

7. Except for Article SERVIN.2.6 [performance requirements], this Title does not apply to subsidies or grants provided by the Parties, including government-supported loans, guarantees and insurance.

#### Article SERVIN.1.2: Definitions

For the purposes of this Title:

(a) "activities performed in the exercise of governmental authority" means activities which are performed, including services which are supplied, neither on a commercial basis nor in competition with one or more economic operators;

(b) "aircraft repair and maintenance services" means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;

(c) "computer reservation system (CRS) services" means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(d) "covered enterprise" means an enterprise in the territory of a Party established in accordance with point (i) by an investor of the other Party, in accordance with the applicable law, existing on the date of entry into force of this Agreement or established thereafter;

(e) "cross-border trade in services" means the supply of a service:

(i) from the territory of a Party into the territory of the other Party; or

(ii) in the territory of a Party to the service consumer of the other Party;

(f) "direct taxes" comprises all taxes on income or capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, taxes on wages or salaries paid by enterprises and taxes on capital appreciation;

(g) "economic activity" means any activity of an industrial, commercial or professional character or activities of craftsmen, including the supply of services, except for activities performed in the exercise of governmental authority;

---

<sup>7</sup> National maritime cabotage covers, for the European Union, without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, transportation of passengers or goods between a port or point located in a Member State of the European Union and another port or point located in that same Member State of the European Union, including on its continental shelf, as provided for in the United Nations Convention on the Law of the Sea, done in Montego Bay, Jamaica, on 10 December 1982, and traffic originating and terminating in the same port or point located in a Member State of the European Union.

- (h) "enterprise" means a legal person or a branch or a representative office of a legal person;
- (i) "establishment" means the setting up or the acquisition of a legal person, including through capital participation, or the creation of a branch or representative office in the territory of a Party, with a view to creating or maintaining lasting economic links;
- (j) "existing" means in effect on the date of signature of this Agreement;
- (k) "ground handling services" means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning; ground handling services do not include: self-handling; security; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra airport transport systems;
- (l) "investor of a Party" means a natural or legal person of a Party that seeks to establish, is establishing or has established an enterprise in accordance with point (i) in the territory of the other Party;
- (m) "legal person" means any legal entity duly constituted or otherwise organised under the applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (n) "legal person of a Party"<sup>8</sup> means:
- (i) for the European Union:
- A) a legal person constituted or organised under the law of the European Union or at least one of its Member States and engaged, in the territory of the European Union, in substantive business operations, understood by the European Union, in line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), as equivalent to the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU; and
- B) shipping companies established outside the European Union, and controlled by natural persons of a Member State of the European Union, whose vessels are registered in, and fly the flag of, a Member State of the European Union;
- (ii) for the United Kingdom of Great Britain and Northern Ireland:
- A) a legal person constituted or organised under the law of the United Kingdom of Great Britain and Northern Ireland and engaged in substantive business operations in the territory of the United Kingdom of Great Britain and Northern Ireland; and
- B) shipping companies established outside the United Kingdom of Great Britain and Northern Ireland and controlled by natural persons of the United Kingdom of

---

<sup>8</sup> For greater certainty, the shipping companies referred to in this point are only considered as legal persons of a Party with respect to their activities relating to the supply of maritime transport services.

Great Britain and Northern Ireland, whose vessels are registered in, and fly the flag of, the United Kingdom of Great Britain and Northern Ireland;

*[EU Placeholder: definition of "measure" if it is not covered in the general part]*

- (o) "measures of a Party" means any measures adopted or maintained by:
- (i) central, regional or local governments or authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- "Measures of a Party" includes measures adopted or maintained by entities listed under point (o) (i) and (ii) by instructing, directing or controlling, either directly or indirectly, the conduct of other entities with regard to those measures ,
- (p) "natural person of a Party" means:
- (i) for the European Union, a national of one of the Member States of the European Union according to its law;<sup>9</sup> and
  - (ii) for the United Kingdom of Great Britain and Northern Ireland, a national of the United Kingdom of Great Britain and Northern Ireland according to its law;
- (q) "operation" means the conduct, management, maintenance, use, enjoyment, or sale or other form of disposal of an enterprise;
- (r) "selling and marketing of air transport services" means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution, but not including the pricing of air transport services nor the applicable conditions;
- (s) "service supplier" means any natural or legal person that seeks to supply or supplies a service;
- (t) "service supplier of a Party" means a natural or legal person of a Party that seeks to supply or supplies a service;
- (u) "professional qualifications" means qualifications attested by evidence of formal qualification, professional experience, or other attestation of competence".

#### Article SERVIN.1.3: Denial of benefits

A Party may deny the benefits of this Title to an investor or service supplier of the other Party, or to a covered enterprise, if the denying Party adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, which:

- (a) prohibit transactions with that investor, service supplier or covered enterprise, or

---

<sup>9</sup> The definition of natural person also includes persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the law of the Republic of Latvia, to receive a non-citizen's passport.

- (b) would be violated or circumvented if the benefits of this Title were accorded to that investor, service supplier or covered enterprise, including where the measures prohibit transactions with a natural or legal person which owns or controls any of them.

## Chapter two: Investment liberalisation

### Article SERVIN.2.1: Scope

This Chapter applies to measures of a Party affecting the establishment of an enterprise to perform economic activities and the operation of such an enterprise by:

- (a) investors of the other Party;
- (b) covered enterprises; and
- (c) for the purposes of Article SERVIN.2.6 [Performance requirements], any enterprise in the territory of the Party which adopts or maintains the measure.

### Article SERVIN.2.2: Market Access

A Party shall not adopt or maintain, with regard to establishment of an enterprise by an investor of the other Party or by a covered enterprise, or operation of a covered enterprise, either on the basis of its entire territory or on the basis of a territorial sub-division, measures that:

- (a) impose limitations on:
  - (i) the number of enterprises that may carry out a specific economic activity, whether in the form of numerical quotas, monopolies, exclusive rights or the requirement of an economic needs test;
  - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) 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;<sup>1011</sup>
  - (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
  - (v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of an economic activity, in the form of numerical quotas or the requirement of an economic needs test;, or
- (b) restrict or require specific types of legal entity or joint venture through which an investor of the other Party may perform an economic activity.

---

<sup>10</sup> Points (a) (i) to (iii) do not cover measures taken in order to limit the production of an agricultural or fishery product.

<sup>11</sup> Point (a) (iii) does not cover measures by a Party which limit inputs for the supply of services.

### Article SERVIN.2.3: National Treatment

1. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to its own investors and to their enterprises, with respect to their establishment and operation in its territory.
2. The treatment accorded by a Party under paragraph 1 means:
  - (a) with respect to a regional or local level of government of the United Kingdom of Great Britain and Northern Ireland, treatment no less favourable than the most favourable treatment accorded, in like situations, by that level of government to investors of the United Kingdom of Great Britain and Northern Ireland and to their enterprises in its territory; and
  - (b) with respect to a government of, or in, a Member State of the European Union, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors of that Member State and to their enterprises in its territory.

### Article SERVIN.2.4: Most Favoured Nation Treatment

1. [Placeholder] *[The EU reserves the right to propose a text on most favoured nation treatment for establishment]*
2. Each Party shall accord to investors of the other Party and to covered enterprises treatment no less favourable than that it accords, in like situations, to investors of a third country and to their enterprises, with respect to operation in its territory.
3. Paragraph[s] 1 [and 2] shall not be construed as obliging a Party to extend to investors of the other Party or to covered enterprises the benefit of any treatment resulting from:
  - (a) an international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation; or
  - (b) measures providing for recognition, including of the standards or criteria for the authorisation, licencing, or certification of a natural person or enterprise to carry out an economic activity, or of prudential measures as referred to in paragraph 3 of the GATS Annex on Financial Services.
4. For greater certainty, the “treatment” referred to in paragraph[s] 1 [and] 2 does not include investor-to-state dispute settlement procedures provided for in other international agreements.
5. For greater certainty, the existence of substantive provisions in other international agreements concluded by a Party with a third country, or mere formal transposition of those provisions into domestic law to the extent that it is necessary in order to incorporate them into the domestic legal order, do not in themselves constitute the “treatment” referred to in paragraph[s] 1 [and 2]. Measures of a Party pursuant to those provisions may constitute such treatment and thus give rise to a breach of this Article.

### Article SERVIN.2.5: Senior management and boards of directors

A Party shall not require a covered enterprise to appoint individuals of any particular nationality as executives, managers or members of boards of directors.



## Article SERVIN.2.6: Performance Requirements

1. A Party shall not impose or enforce any requirement, or enforce any commitment or undertaking, in connection with the establishment or operation of any enterprise in its territory:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services provided in its territory or to purchase goods or services from natural or legal persons or any other entities in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;
- (e) to restrict sales of goods or services in its territory that such enterprise produces or supplies, by relating those sales in any way to the volume or value of its exports or foreign exchange inflows;
- (f) to provide access to or transfer technology, a production process or other proprietary knowledge to a natural or legal person or any other entity in its territory;
- (g) to supply exclusively from the territory of that Party a good produced or a service supplied by the enterprise to a specific regional or world market;
- (h) to locate the headquarters for a specific region of the World which is broader than the territory of the Party or the world market in its territory;
- (i) to employ a given number or percentage of natural persons of that Party;
- (j) to achieve a given level or value of research and development in its territory;
- (k) to restrict the exportation or sale for export; or
- (l) to adopt:
  - (i) a rate or amount of royalty below a certain level; or
  - (ii) a given duration of the term of a licence contract;

with regard to any licence contract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking is enforced, or with regard to any future licence contract freely entered into between the enterprise and a natural or legal person or any other entity in its territory, if the requirement is imposed or enforced or the commitment or undertaking is enforced, in a manner that constitutes direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. Point (l) does not apply when the licence contract is concluded between the enterprise and the Party. A "licence contract" referred to in this subparagraph means any contract concerning the licensing of technology, a production process, or other proprietary knowledge.

2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of an enterprise in its territory, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced or services supplied in its territory, or to purchase goods or services from natural or legal persons or any other entity in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such enterprise;

(d) to restrict sales of goods or services in its territory that such enterprise produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange inflows; or

(e) to restrict the exportation or sale for export.

3. Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Points (f) and (l) of paragraph 1 do not apply when:

(a) the requirement is imposed or enforced, or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be a violation of competition law; or

(b) a Party authorises the use of an intellectual property right in accordance with Article 31 or Article 31*bis* of the TRIPS Agreement, or adopts or maintains measures requiring the disclosure of data or proprietary information that fall within the scope of, and are consistent with, paragraph 3 of Article 39 of the TRIPS Agreement.

5. Points 1 (a) to (c) of paragraph 1 and points (a) and (b) of paragraph 2 do not apply to qualification requirements for goods or services with respect to participation in export promotion and foreign aid programmes.

6. For greater certainty, points (a) and (b) of paragraph 2 do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

7. Point (l) of paragraph 1 does not apply if the requirement is imposed or enforced, or the commitment or undertaking is enforced, by a tribunal as equitable remuneration under the Party's copyright laws.

8. A Party shall neither impose nor enforce any measure inconsistent with its obligations under the TRIMS Agreement, even where such measure has been listed by that Party in ANNEX SERVIN-1 or ANNEX SERVIN-2 to this Title.

9. For greater certainty, this Article shall not be construed as requiring a Party to permit a particular service to be supplied on a cross-border basis where that Party adopts or maintains restrictions or prohibitions on such provision of services which are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in ANNEX SERVIN-1 or ANNEX SERVIN-2 to this Title.

10. A condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a requirement or a commitment or undertaking for the purposes of paragraph 1.

## Article SERVIN.2.7: Non-conforming measures and Exceptions

1. Articles SERVIN.2.2 [Market Access], 2.3 [National Treatment], 2.4 [Most Favoured Nation Treatment], 2.5 [Senior management and boards of directors] and 2.6 [Performance Requirements], do not apply to:

(a) any existing non-conforming measure of a Party at the level of:

(i) for the Union:

- (A) the Union, as set out in ANNEX SERVIN-1 [of the European Union] to this Title;
- (B) the central government of a Member State of the Union, as set out in ANNEX SERVIN-1 [of the European Union] to this Title;
- (C) a regional government of a Member State of the European Union, as set out in ANNEX SERVIN-1 [of the European Union] to this Title; or
- (D) a local government, other than that referred to in point (C); and

(ii) for the United Kingdom:

- (A) the central government, as set out in ANNEX SERVIN-1 [of the UK] to this Title;
- (B) a [regional government], as set out in ANNEX SERVIN-1 [of the UK] to this Title; or
- (C) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in point (a); or

(c) a modification to any non-conforming measure referred to in points (a) and (b), provided that it does not decrease the conformity of the measure, as it existed immediately before the modification, with Articles SERVIN.2.2 (Market Access), paragraph 1 of Article SERVIN.2.3 (National Treatment), Articles SERVIN.2.4 (Most Favoured Nation Treatment), SERVIN.2.5 (Senior management and boards of directors) or SERVIN.2.6 (Performance Requirements).

2. Articles SERVIN.2.2 (Market Access), 2.3 (National Treatment-establishment), 2.4 (Most Favoured Nation Treatment), 2.5 (Senior management and boards of directors) and 2.6 (Performance Requirements) do not apply to a measure of a Party which are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in ANNEX SERVIN-2 to this Title.

3. Articles SERVIN.2.3 (National Treatment) and 2.4 (Most-favoured-nation treatment) do not apply to any measure that constitutes an exception to, or a derogation from, Articles 3 or 4 of the TRIPS Agreement, as specifically provided in Articles 3 to 5 of that Agreement.

4. For greater certainty, Articles SERVIN.2.3 [National Treatment] and 2.4 [Most Favoured Nation Treatment] shall not be construed as preventing a Party from prescribing information requirements, including for statistical purposes, in connection with the establishment or operation of

investors of the other Party or of covered enterprises, provided that it does not constitute a means to circumvent that Party's obligations under these Articles.

### Chapter three: Cross-Border Trade in Services

#### Article SERVIN.3.1: Scope

This Chapter applies to measures of a Party affecting the cross-border trade in services by service suppliers of the other Party.

#### Article SERVIN.3.2: Market Access

A Party shall not adopt or maintain, either on the basis of its entire territory or on the basis of a territorial sub-division, measures that:

- (a) impose limitations on:
  - (i) the number of services suppliers that may supply a specific service, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
  - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test; or
  - (iii) the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>12</sup> or
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Point (a) includes measures which require a service supplier of the other Party to establish a commercial presence or to be resident in a Party's territory as a condition for the cross-border supply of a service.

#### Article SERVIN.3.3: National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favourable than that it accords, in like situations, to its own services and services suppliers.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to services or service suppliers of the other Party.
4. Nothing in this Article shall be construed as requiring either Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

---

<sup>12</sup> Point (a) (iii) does not cover measures by a Party which limit inputs for the supply of services.

#### Article SERVIN.3.4: Most Favoured Nation Treatment

*[Placeholder] [The EU reserves the right to propose a text on most favoured nation treatment]*

#### Article SERVIN.3.5: Non-conforming measures

1. Articles SERVIN.3.2 (Market Access), 3.3 (National Treatment) [and 3.4 (Most Favoured Nation Treatment)] do not apply to:

(a) any existing non-conforming measure of a Party at the level of:

(i) for the Union:

(A) the Union, as set out in ANNEX SERVIN-1 [of the European Union] to this Title;

(B) the central government of a Member State of the Union, as set out in ANNEX SERVIN-1 [of the European Union] to this Title;

(C) a regional government of a Member State of the Union, as set out in ANNEX SERVIN-1 [of the European Union] to this Title; or

(D) a local government, other than that referred to in point (C); and

(ii) for the United Kingdom:

(A) the central government, as set out in the ANNEX SERVIN-1 [of the UK] to this Title;

(B) a [regional subdivision], as set out in ANNEX SERVIN-1 [of the UK] to this Title; or

(C) a local government;

(b) the continuation or prompt renewal of any non-conforming measure referred to in point (a); or

(c) a modification of any non-conforming measure referred to in points (a) and (b) to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with Articles 3.2 (Market Access), 3.3 (National Treatment) and [3.4 (Most Favoured Nation Treatment)].

2. Articles 3.2 (Market Access), 3.3 (National Treatment) and [3.4 (Most Favoured Nation Treatment)] do not apply to any measure of a Party are consistent with the reservations, conditions or qualifications specified with respect to a sector, subsector or activity listed in ANNEX SERVIN-2 to this Title.

### Chapter four: Entry and Temporary Stay of Natural Persons for Business Purposes

#### Article SERVIN.4.1: Scope and Definitions

1. This Chapter applies to measures of a Party affecting the performance of economic activities through the entry and temporary stay in its territory of natural persons of the other Party, who are business visitors for establishment purposes, contractual service suppliers, independent professionals, intra-corporate transferees and short-term business visitors.

2. To the extent that commitments are not undertaken in this Chapter, all requirements provided for in the law of a Party regarding the entry and temporary stay of natural persons shall continue to apply, including laws and regulations concerning the period of stay.

3. Notwithstanding the provisions of this Chapter, all requirements provided for in the law of a Party regarding work and social security measures shall continue to apply, including laws and regulations concerning minimum wages and collective wage agreements.

4. Commitments on the entry and temporary stay of natural persons for business purposes do not apply in cases where the intent or effect of the entry and temporary stay is to interfere with or otherwise affect the outcome of any labour or management dispute or negotiation, or the employment of any natural person who is involved in that dispute.

5. For the purposes of this Chapter:

(a) "business visitors for establishment purposes" means natural persons working in a senior position within a legal person of a Party, who:

(i) are responsible for setting up an enterprise of such legal person in the territory of the other Party;

(ii) do not offer or provide services or engage in any economic activity other than that which is required for the purposes of the establishment of that enterprise and;

(iii) do not receive remuneration from a source located within the other Party;

(b) "contractual services suppliers" means natural persons employed by a legal person of a Party (other than through an agency for placement and supply services of personnel), which is not established in the territory of the other Party and has concluded a bona fide contract, not exceeding 12 months, to supply services to a final consumer in the other Party requiring the temporary presence of its employees who:

(i) have offered the same type of services as employees of the legal person for a period of not less than one year immediately preceding the date of their application for entry and temporary stay;

(ii) possess, on that date, at least three years professional experience, obtained after having reached the age of majority, in the sector of activity that is the object of the contract, a university degree or a qualification demonstrating knowledge of an equivalent level and the professional qualifications legally required to exercise that activity in the other Party<sup>13</sup>; and

(iii) do not receive remuneration from a source located within the other Party;

(c) "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who:

(i) have not established in the territory of the other Party;

---

<sup>13</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

- (ii) have concluded a bona fide contract (other than through an agency for placement and supply services of personnel) for a period not exceeding 12 months to supply services to a final consumer in the other Party, requiring their presence on a temporary basis; and
  - (iii) possess, on the date of their application for entry and temporary stay, at least six years professional experience in the relevant activity, a university degree or a qualification demonstrating knowledge of an equivalent level and the professional qualifications legally required to exercise that activity in the other Party<sup>14</sup>; and
- (d) "intra-corporate transferees" means natural persons, who:
- (i) have been employed by a legal person of a Party, or have been partners in it, for a period, immediately preceding the date of the intra-corporate transfer, of not less than one year in the case of managers and specialists and of not less than six months in the case of trainee employees;
  - (ii) at the time of application reside outside the territory of the other Party;
  - (iii) are temporarily transferred to an enterprise of the legal person in the territory of the other Party which is a member of the same group as the originating legal person, including its representative office, subsidiary, branch or head company<sup>15</sup>; and
  - (iv) belong to one of the following categories:
    - (a) managers:<sup>16</sup> natural persons working in a senior position, who primarily direct the management of the enterprise in the other Party, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent and whose responsibilities include:
      1. directing the enterprise or a department or subdivision thereof;
      2. supervising and controlling the work of other supervisory, professional or managerial employees; and
      3. having the authority to recommend hiring, dismissing or other personnel-related actions;
    - (b) specialists: natural persons possessing specialised knowledge, essential to the enterprise's areas of activity, techniques or management, which shall be assessed taking into account not only knowledge specific to the enterprise, but also whether the person has a high level of qualification, including adequate professional experience of a type of work or activity requiring specific technical knowledge, including possible membership of an accredited profession; or

---

<sup>14</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

<sup>15</sup> Managers and specialists may be required to demonstrate they possess the professional qualifications and experience needed in the legal person to which they are transferred.

<sup>16</sup> While managers do not directly perform tasks concerning the actual supply of the services, this does not prevent them, in the course of executing their duties as described above, from performing such tasks as may be necessary for the provision of the services.

(c) trainee employees: natural persons possessing a university degree who are temporarily transferred for career development purposes or to obtain training in business techniques or methods and are paid during the transfer.<sup>17</sup>

6. The service contract referred to under points (b) and (c) of paragraph 5 shall comply with the requirements of the law of the Party where the contract is executed.

#### Article SERVIN.4.2: Intra-corporate Transferees and Business Visitors for Establishment Purposes

1. Subject to the relevant conditions and qualifications specified in ANNEX SERVIN-3 [reservations for intra-corporate transferees, business visitors for establishment purposes and short term business visitors]:

(a) a Party shall allow:

(i) the entry and temporary stay of intra-corporate transferees and business visitors for establishment purposes; and

(ii) the employment in its territory of intra-corporate transferees of the other Party;

(b) a Party shall not maintain or adopt limitations in the form of numerical quotas or economic needs tests on the total number of natural persons that, in a specific sector, are allowed entry as business visitors for establishment purposes or that an investor may employ as intra-corporate transferees, either on the basis of a territorial subdivision or on the basis of its entire territory; and

(c) each Party shall accord to intra-corporate transferees and business visitors for establishment purposes of the other Party, during their temporary stay in its territory, treatment no less favourable than that it accords, in like situations, to its own natural persons.

2. The permissible length of stay shall be for a period of up to three years for managers and specialists, up to one year for trainee employees and up to 90 days within any six-month period for business visitors for establishment purposes.

#### Article SERVIN.4.3: Short-term business visitors

1. Subject to the relevant conditions and qualifications specified in ANNEX SERVIN-3 to this Title [reservations for intra-corporate transferees, business visitors for establishment purposes and short term business visitors], a Party shall allow the entry and temporary stay of short-term business visitors of the other Party for the purposes of carrying out the activities listed in ANNEX SERVIN3bis to this Title [list of activities of short-term business visitors], subject to the following conditions:

(a) the short-term business visitors are not engaged in selling their goods or supplying services to the general public;

(b) the short-term business visitors do not, on their own behalf, receive remuneration from within the Party where they are staying temporarily; and

(c) the short-term business visitors are not engaged in the supply of a service in the framework of a contract concluded between a legal person that has not established in the territory of the

---

<sup>17</sup> The recipient enterprise may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For AT, CZ, DE, FR, ES, HU and LT, training must be linked to the university degree which has been obtained.



Party where they are staying temporarily, and a consumer there, except as provided for in ANNEX SERVIN-3bis to this Title [list of activities of short-term business visitors].

2. Unless otherwise specified in ANNEX SERVIN-3 to this Title [reservations for short-term business visitors], a Party shall allow entry of short-term business visitors without the requirement of a work permit, economic needs test or other prior approval procedures of similar intent.

3. The permissible length of stay shall be for a period of up to 90 days in any 12- month period.

#### Article SERVIN.4.4: Contractual Service Suppliers and Independent Professionals

1. In the sectors subsectors and activities specified in ANNEX SERVIN-4 to this Title and subject to the relevant conditions and qualifications specified therein:

(a) a Party shall allow the entry and temporary stay of contractual service suppliers and independent professionals in its territory;

(b) a Party shall not adopt or maintain limitations on the total number of contractual service suppliers and independent professionals of the other Party allowed temporary entry, in the form of numerical quotas or an economic needs test; and

(c) each Party shall accord to contractual service suppliers and independent professionals of the other Party, with regard to the supply of their services in its territory, treatment no less favourable than that it accords, in like situations, to its own service suppliers.

2. Access accorded under this Article relates only to the service which is the subject of the contract and does not confer entitlement to utilise the professional title of the Party where the service is provided.

3. The number of persons covered by the service contract shall not be greater than necessary to fulfil the contract, as it may be required by the law of the Party where the service is supplied.

4. The permissible length of stay shall be for a cumulative period of up to 12 months, or for the duration of the contract, whichever is less.

#### Article SERVIN.4.5: Non-conforming measures

To the extent that the relevant measure affects the temporary stay of natural persons for business purposes, points (b) and (c) of Article SERVIN.4.2(1) and points (b) and (c) of Article SERVIN.4.4(1) do not apply to:

(a) any existing non-conforming measure of a Party at the level of:

(i) for the Union:

(A) the Union, as specified in ANNEX SERVIN-1 [(EU)] to this Title;

(B) the central government of a Member State of the Union, as specified in ANNEX SERVIN-1 [(EU)] to this Title;

(C) a regional government of a Member State of the Union, as specified in ANNEX SERVIN-1 [(EU)] to this Title; or

(D) a local government, other than referred to in point (C); and

- (ii) for the United Kingdom:
  - (A) the central government, as specified in ANNEX SERVIN-1 [UK] to this Title;
  - (B) a [regional subdivision], as specified in ANNEX SERVIN-1 [(UK)] to this Title of the United Kingdom; or
  - (C) a local government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in point (a);
- (c) a modification of any non-conforming measure referred to in point (a) and (b) to the extent that it does not decrease the conformity of the measure, as it existed immediately before the modification, with points (b) and (c) of Article SERVIN.4.2(1) and points (b) and (c) of Article SERVIN.4.4(1)); or
- (d) any measure of a Party consistent with a condition or qualification specified in ANNEX SERVIN-2 to this Title.

#### Article SERVIN.4.6: Transparency

1. Each Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons of the other Party, referred to in Article SERVIN.4.1(1).
2. The information referred to in paragraph 1 shall, to the extent possible, include the following information relevant to the entry and temporary stay of natural persons:
  - (a) entry conditions;
  - (b) an indicative list of documentation that may be required in order to verify the fulfilment of the conditions;
  - (c) indicative processing time;
  - (d) applicable fees;
  - (e) appeal procedures; and
  - (f) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

### Chapter five: Regulatory Framework

#### *Section 1: Domestic Regulation*

##### Article SERVIN.5.1: Scope and definitions

1. This Section applies to measures by the Parties relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards that affect:
  - (a) cross-border trade in services;
  - (b) establishment or operation; or

(c) the supply of a service through the presence of a natural person of a Party in the territory of the other Party of categories of natural persons as defined in Article SERVIN.4.1 (Scope and Definitions).

As far as measures relating to technical standards are concerned, this Section only applies to such measures affecting trade in services. Technical standards do not include regulatory or implementing technical standards for financial services.

2. This Section does not apply to licensing requirements and procedures, qualification requirements and procedures, and technical standards pursuant to a measure:

(a) that does not conform with Article SERVIN.2.2 (Market Access) or 2.3 (National Treatment) and is referred to in points (a) to (c) of Article SERVIN.2.7(1) (Non-conforming measures and Exceptions) or with Article SERVIN.3.2 (Market Access) or 3.3 (National Treatment) and is referred to in points (a) to (c) of Article SERVIN.3.5(1) (Non-conforming measures) or with points (b) and (c) of Article SERVIN 4.2 or with points (b) and (c) of Article SERVIN 4.4 and is referred to in Article SERVIN 4.5 (1) ; or

(b) referred to in paragraph 2 of Article SERVIN.2.7 or paragraph 2 of Article SERVIN.3.5.

3. For the purposes of this Section,

(a) "authorisation" means the permission to carry out any of the activities referred to in points (a) to (c) of paragraph 1 resulting from a procedure a natural or legal person must adhere to in order to demonstrate compliance with licensing requirements, qualification requirements or technical standards.

(b) "competent authority" means a central, regional or local government or authority or non-governmental body in the exercise of powers delegated by central, regional or local governments or authorities, which is entitled to take a decision concerning the authorisation referred to in point (a);

#### Article SERVIN.5.2: Submission of applications

Each Party shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation. If an activity for which authorisation is requested is within the jurisdiction of multiple competent authorities, multiple applications for authorisation may be required.

#### Article SERVIN.5.3: Application timeframes

If a Party requires authorisation, it shall ensure that its competent authorities, to the extent practicable, permit the submission of an application at any time throughout the year. If a specific time period for applying for authorisation exists, the Party shall ensure that the competent authorities allow a reasonable period of time for the submission of an application.

#### Article SERVIN.5.4: Electronic applications and acceptance of copies

If a Party requires authorisation, it shall ensure that its competent authorities:

(a) to the extent possible accept applications in electronic format; and

(b) accept copies of documents, that are authenticated in accordance with the Party's domestic law, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorisation process.

## Article SERVIN.5.5: Processing of applications

1. If a Party requires authorisation, it shall ensure that its competent authorities:
    - (a) to the extent practicable, provide an indicative timeframe for the processing of an application;
    - (b) at the request of the applicant, provide without undue delay information concerning the status of the application;
    - (c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's domestic laws and regulations;
    - (d) if they consider an application complete for the purposes of processing under the Party's domestic laws and regulations,<sup>18</sup> within a reasonable period of time after the submission of the application ensure that:
      - (i) the processing of the application is completed; and
      - (ii) the applicant is informed of the decision concerning the application, to the extent possible in writing;<sup>19</sup>
    - (e) if they consider an application incomplete for the purposes of processing under the Party's domestic laws and regulations, within a reasonable period of time, to the extent practicable:
      - (i) inform the applicant that the application is incomplete;
      - (ii) at the request of the applicant identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and
      - (iii) provide the applicant with the opportunity to provide the additional information that is required to complete the application;<sup>20</sup>

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they inform the applicant within a reasonable period of time; and

  - (f) if an application is rejected, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and of the timeframe for an appeal against that decision and, if applicable, the procedures for resubmission of an application; an applicant shall not be prevented from submitting another application solely on the basis of a previously rejected application.
2. The Parties shall ensure that their competent authorities grant an authorisation as soon as it is established, in the light of an appropriate examination, that the applicant meets the conditions for obtaining it.

---

<sup>18</sup> Competent authorities may require that all information is submitted in a specified format to consider it "complete for the purposes of processing".

<sup>19</sup> Competent authorities may meet the requirement set out in point (ii) by informing an applicant in advance in writing, including through a published measure, that a lack of response after a specified period of time from the date of submission of the application indicates acceptance of the application. The reference to "in writing" should be understood as including electronic format.

<sup>20</sup> Such "opportunity" does not require a competent authority to provide extensions of deadlines.

3. The Parties shall ensure that authorisation, once granted, enters into effect without undue delay, subject to the applicable terms and conditions<sup>21</sup>.

#### Article SERVIN.5.6: Fees

1. For all economic activities other than financial services, each Party shall ensure that the authorisation fees charged by its competent authorities are reasonable and transparent and do not in themselves restrict the supply of the relevant service or the pursuit of any other economic activity.
2. With regard to financial services, each Party shall ensure that its competent authorities, with respect to authorisation fees that they charge, provide applicants with a schedule of fees or information on how fee amounts are determined, and do not use the fees as a means of avoiding the Party's commitments or obligations.
3. Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions or mandated contributions to universal service provision.

#### Article SERVIN.5.7: Assessment of qualifications

If a Party requires an examination to assess the qualifications of an applicant for authorisation, it shall ensure that its competent authorities schedule such an examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. To the extent practicable, each Party shall accept requests in electronic format to take such examinations and shall consider the use of electronic means in other aspects of examination processes.

#### Article SERVIN.5.8: Objectivity, impartiality and independence

If a Party adopts or maintains a measure relating to authorisation, it shall ensure that the competent authority concerned processes an application, reaches and administers its decisions objectively and impartially and in a manner independent from the undue influence of any person carrying out the economic activity for which authorisation is required.

#### Article SERVIN.5.9: Publication and information available

If a Party requires authorisation, the Party shall promptly publish the information necessary for persons carrying out or seeking to carry out the activities referred to in paragraph 1 of Article SERVIN.5.1 for which the authorisation is required to comply with the requirements, technical standards and procedures for obtaining, maintaining, amending and renewing such authorisation. Such information shall include, to the extent it exists:

- (a) the licensing and qualification requirements and procedures;
- (b) contact information of relevant competent authorities;
- (c) authorisation fees;
- (d) applicable technical standards;
- (e) procedures for appeal or review of decisions concerning applications;

---

<sup>21</sup> Competent authorities are not responsible for delays due to reasons outside their competence.

- (f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;
- (g) opportunities for public involvement, such as through hearings or comments; and
- (h) indicative timeframes for the processing of an application.

For the purposes of this Section, "publish" means to include in an official publication, such as an official journal, or on an official website. Parties are encouraged to consolidate electronic publications into a single portal.

#### Article SERVIN.5.10: Technical standards

A Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant international organisations, designated to develop technical standards to do so through open and transparent processes.

#### Article SERVIN.5.11: Development of measures

If a Party adopts or maintains measures relating to authorisation, it shall ensure that:

- (a) such measures are based on clear, objective and transparent criteria which may include, *inter alia*, competence and the ability to supply a service or any other economic activity, including to do so in compliance with a Party's regulatory requirements, such as health and environmental requirements, it being understood that competent authorities may assess the weight to be given to each criterion;
- (b) the procedures are impartial, easily accessible to all applicants and are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist; and
- (c) the procedures do not in themselves unjustifiably prevent fulfilment of the requirements.

#### Article SERVIN.5.12: Limited numbers of licences

If the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, a Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality, objectivity and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure. In establishing the rules for the selection procedure, a Party may take into account legitimate policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

### *Section 2: Provisions of General Application*

#### Article SERVIN.5.13: Review procedures for administrative decisions

A Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, on request of an affected investor or service supplier of the other Party, for the prompt review of, and if justified appropriate remedies for, administrative decisions that affect establishment or operation, cross-border trade in services or the supply of a service through the presence of a natural person of a Party in the territory of the other Party. If such procedures are not independent of the competent authority entrusted with the administrative decision concerned, a Party shall ensure that the procedures in fact provide for an objective and impartial review.

#### Article SERVIN.5.14: Professional qualifications

1. Nothing in this Article shall prevent a Party from requiring that natural persons possess the necessary professional qualifications specified in the territory where the activity is performed, for the sector of activity concerned.
2. The Parties shall encourage the professional bodies or authorities, which are relevant for the sector of activity concerned in their respective territories, to develop and provide joint recommendations on the recognition of professional qualifications to Partnership Council. Such joint recommendations shall be supported by evidence of:
  - (a) the economic value of an envisaged arrangement on the recognition of professional qualifications; and
  - (b) the compatibility of the respective regimes, that is, the extent to which the requirements applied by each Party for the authorisation, licensing, operation and certification are compatible.
3. On receipt of a joint recommendation, the Partnership Council shall review its consistency with this Title within a reasonable period of time. The Partnership Council may, following such review, develop and adopt an arrangement on the conditions for the recognition of professional qualifications by decision as an annex to this Agreement, which shall be considered to form an integral part of this Title<sup>22</sup>.
4. An arrangement referred to under paragraph 3 shall provide for the conditions for recognition of professional qualifications acquired in the Union and professional qualifications acquired in the United Kingdom relating to an activity covered by this Title and Title V [Digital Trade].
5. The Guidelines for arrangements on the recognition of professional qualifications set out in ANNEX SERVIN-6 shall be taken into account in the development of the joint recommendations referred to in paragraph 2 and by the Partnership Council when assessing whether to adopt such an Arrangement, as referred to in paragraph 3.

#### *Section 3: Delivery Services*

#### Article SERVIN.5.15: Scope and definitions

1. This Section shall apply to measures of a Party affecting the supply of delivery services in addition to Chapters one, two, three and four of this Title, and to Sections 1 and 2 of the present Chapter.
2. For the purposes of this Section:
  - (a) “delivery services” means postal, courier, express delivery or express mail services, which include the following activities: the collection, sorting, transport, and delivery of postal items;
  - (b) “express delivery services” means the collection, sorting, transport and delivery of postal items at accelerated speed and reliability and may include value added elements such as collection from point of origin, personal delivery to the addressee, tracing, possibility of changing the destination and addressee in transit or confirmation of receipt;

---

<sup>22</sup> For greater certainty, such arrangements shall not lead to the automatic recognition of qualifications but shall set, in the mutual interest of both Parties, the conditions for the competent authorities granting recognition.

- (c) “express mail services” means international express delivery services supplied through the EMS Cooperative, which is the voluntary association of designated postal operators under Universal Postal Union (UPU);
- (d) “licence” means an authorisation that a regulatory authority of a Party may require of an individual supplier in order for that supplier to offer postal and courier services;
- (e) “postal item” means an item up to 31.5 kg addressed in the final form in which it is to be carried by any type of supplier of delivery services, whether public or private, and may include items such as a letter, parcel, newspaper or catalogue;
- (f) “postal monopoly” means the exclusive right to supply specified delivery services within a Party’s territory or a subdivision thereof pursuant to the law of that Party; and
- (g) “universal service” means the permanent supply of a delivery service of specified quality at all points in the territory of a Party or a subdivision thereof at affordable prices for all users.

#### Article SERVIN.5.16: Universal service

1. Each Party has the right to define the kind of universal service obligation it wishes to maintain and to decide on its scope and implementation. Any universal service obligation shall be administered in a transparent, non-discriminatory and neutral manner with regard to all suppliers subject to the obligation.
2. If a Party requires inbound express mail services to be supplied on a universal service basis, it shall not accord preferential treatment to this service over other international express delivery services.

#### Article SERVIN.5.17: Universal service funding

A Party shall not impose fees or other charges on the supply of a non-universal delivery service for the purposes of funding the supply of a universal service. This Article does not apply to generally applicable taxation measures or administrative fees.

#### Article SERVIN.5.18: Prevention of market distortive practices

Each Party shall ensure that suppliers of delivery services subject to a universal service obligation or postal monopolies do not engage in market distortive practices such as:

- (a) using revenues derived from the supply of the service subject to a universal service obligation or from a postal monopoly to cross-subsidise the supply of an express delivery service or any delivery service which is not subject to a universal service obligation, or
- (b) unjustifiably differentiating among customers with respect to tariffs or other terms and conditions for the supply of a service subject to a universal service obligation or a postal monopoly.

#### Article SERVIN.5.19: Licences

1. If a Party requires a licence for the provision of delivery services, it shall make publicly available:
  - (a) all the licensing requirements and the period of time normally required to reach a decision concerning an application for a licence; and



(b) the terms and conditions of licences.

2. The procedures, obligations and requirements of a license shall be transparent, non-discriminatory and based on objective criteria.

3. If a licence application is rejected by the competent authority, it shall inform the applicant of the reasons for the rejection in writing. Each Party shall establish an appeal procedure through an independent body available to applicants whose licence has been rejected. This body may be a court.

#### Article SERVIN.5.20: Independence of the regulatory body

1. Each Party shall establish or maintain a regulatory body which shall be legally distinct and functionally independent from any supplier of delivery services. If a Party owns or controls a supplier of delivery services, it shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. The regulatory bodies shall perform their tasks in a transparent and timely manner and have adequate financial and human resources to carry out the task assigned to them. Their decisions shall be impartial with respect to all market participants.

### *Section 4: Telecommunications Services*

#### Article SERVIN.5.21: Scope

This Section shall apply to measures of a Party affecting the supply of telecommunications services in addition to Chapters 1, 2, 3 and 4 of this Title, and to Sections A and B of the present Chapter.

#### Article SERVIN.5.22: Definitions

For the purposes of this Section:

(a) "associated facilities" means associated services, physical infrastructure and other facilities or elements associated with a telecommunications network or telecommunications service which enable or support the supply of services via that network or service or have the potential to do so;

(b) "essential facilities" means facilities of a public telecommunications network or a public telecommunications service that:

(i) are exclusively or predominantly provided by a single or limited number of suppliers; and

(ii) cannot feasibly be economically or technically substituted in order to provide a service;

(c) "interconnection" means the linking of public telecommunications networks used by the same or different suppliers of telecommunications networks or telecommunications services in order to allow the users of one supplier to communicate with users of the same or another supplier or to access services provided by another supplier; services may be provided by the suppliers involved or any other supplier who has access to the network;

(d) "Internet access service" means a public telecommunications service that provides access to the Internet and thereby connectivity to virtually all end points of the Internet, irrespective of the network technology and terminal equipment used;

- (e) "leased circuit" means telecommunications services or facilities, including those of a virtual nature, that set aside capacity for the dedicated use of, or availability to, a user between two or more designated points;
- (f) "major supplier" means a supplier of telecommunications networks or telecommunications services which has the ability to materially affect the terms of participation (having regard to price and supply) in a relevant market for telecommunications networks or telecommunications services as a result of control over essential facilities or the use of its position in that market;
- (g) "network element" means a facility or equipment used in supplying a telecommunications service, including features, functions and capabilities provided by means of that facility or equipment;
- (h) "number portability" means the ability of subscribers who so request to retain the same telephone numbers, at the same location in the case of a fixed line, without impairment of quality, reliability or convenience when switching between the same category of suppliers of public telecommunications services;
- (i) "public telecommunications network" means any telecommunications network used wholly or mainly for the provision of public telecommunications services which supports the transfer of information between network termination points;
- (j) "public telecommunications service" means any telecommunications service that is offered to the public generally;
- (k) "subscriber" means any natural or legal person which is party to a contract with a supplier of public telecommunications services for the supply of such services;
- (l) "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- (m) "telecommunications network" means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the transmission and reception of signals by wire, radio, optical, or other electromagnetic means;
- (n) "telecommunications regulatory authority" means the body or bodies charged by a Party with the regulation of telecommunications networks and telecommunications services covered by this Section;
- (o) "telecommunications service" means a service which consists wholly or mainly in the transmission and reception of signals, including broadcasting signals, over telecommunications networks, including those used for broadcasting, but not a service providing, or exercising editorial control over, content transmitted using telecommunications networks and telecommunications services;
- (p) "universal service" means the minimum set of services of specified quality that must be made available to all users, or to a set of users, in the territory of a Party, or in a subdivision thereof, regardless of their geographical location and at an affordable price; and
- (q) "user" means any natural or legal person using a public telecommunications service.

#### Article SERVIN.5.23: Telecommunications regulatory authority

1. Each Party shall establish or maintain a telecommunications regulatory authority that:
  - (a) is legally distinct and functionally independent from any supplier of telecommunications networks, telecommunications services or telecommunications equipment;
  - (b) uses procedures and issues decisions that are impartial with respect to all market participants;
  - (c) acts independently and does not seek or take instructions from any other body in relation to the exercise of the tasks assigned to it by law to enforce the obligations set out in Articles 5.25 to 5.27, 5.29 and 5.30
  - (d) has the regulatory power, as well as adequate financial and human resources, to carry out the tasks mentioned in point (c);
  - (e) has the power to ensure that suppliers of telecommunications networks or telecommunications services provide it, promptly upon request, with all the information<sup>23</sup>, including financial information, which is necessary to enable it to carry out the tasks mentioned in point (c); and
  - (f) exercises its powers transparently and in a timely manner.
2. Each Party shall ensure that the tasks assigned to the telecommunications regulatory authority are made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. A Party that retains ownership or control of suppliers of telecommunications networks or telecommunications services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
4. Each Party shall ensure that a user or supplier of telecommunications networks or telecommunications services affected by a decision of the telecommunications regulatory authority has a right of appeal before an appeal body which is independent of the regulatory authority and other affected parties. Pending the outcome of the appeal, the decision shall stand, unless interim measures are granted in accordance with the Party's law.

#### Article SERVIN.5.24: Authorisation to provide telecommunications networks or services

1. Each Party shall permit the provision of telecommunications networks or telecommunications services without a prior formal authorisation.
2. Each Party shall make publicly available all the criteria, applicable procedures and terms and conditions under which suppliers are permitted to provide telecommunications networks or telecommunications services.
3. Any authorisation criteria and applicable procedures shall be as simple as possible, objective, transparent, non-discriminatory and proportionate. Any obligations and conditions imposed on or associated with an authorisation shall be non-discriminatory, transparent, proportionate and related to the services or networks provided.

---

<sup>23</sup> Information requested shall be treated in accordance with the requirements of confidentiality.

4. Each Party shall ensure that an applicant for an authorisation receives in writing the reasons for the denial or the revocation of an authorisation or the imposition of supplier-specific conditions. In such cases, the applicant shall have a right of appeal before an appeal body.

5. Administrative fees imposed on suppliers shall be objective, transparent, non-discriminatory and commensurate with the administrative costs reasonably incurred in the management, control and enforcement of the obligations set out in this Section<sup>24</sup>.

#### Article SERVIN.5.25: Interconnection

Each Party shall ensure that a supplier of public telecommunications networks or public telecommunications services has the right and, when requested by another supplier of public telecommunications networks or public telecommunications services, the obligation to negotiate interconnection for the purposes of providing public telecommunications networks or public telecommunications services.

#### Article SERVIN.5.26: Access and use

1. Each Party shall ensure that any covered enterprise or service supplier of the other Party is accorded access to and use of public telecommunications networks or public telecommunications services on reasonable and non-discriminatory<sup>25</sup> terms and conditions. This obligation shall be applied, inter alia, through paragraphs 2 to 5.

2. Each Party shall ensure that covered enterprises or service suppliers of the other Party have access to and use of any public telecommunications network or public telecommunications service offered within or across its border, including private leased circuits, and to this end shall ensure, subject to the provisions in paragraph 5, that such enterprises and suppliers are permitted:

(a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to conduct their operations;

(b) to interconnect private leased or owned circuits with public telecommunications networks or with circuits leased or owned by another covered enterprise or service supplier; and

(c) to use operating protocols of their choice in their operations, other than as necessary to ensure the availability of telecommunications services to the public generally.

3. Each Party shall ensure that covered enterprises or service suppliers of the other Party may use public telecommunications networks and public telecommunications services for the movement of information within and across borders, including for their intra-corporate communications, and for access to information contained in databases or otherwise stored in machine-readable form in the territory of either Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary to ensure the security and confidentiality of communications, subject to the requirement that such measures are not applied in a manner which would constitute either a disguised restriction on trade in services

---

<sup>24</sup> Administrative fees do not include payments for rights to use scarce resources and mandated contributions to universal service provision.

<sup>25</sup> For the purposes of this Article, “non-discriminatory” means most-favoured-nation and national treatment as defined in Articles SERVIN.2.3, 3.3, 2.4 and 3.4, as well as under terms and conditions no less favourable than those accorded to any other user of like public telecommunications networks or services in like situations.

or a means of arbitrary or unjustifiable discrimination or of nullification or impairment of benefits under this Title.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services other than as necessary:

(a) to safeguard the public service responsibilities of suppliers of public telecommunications networks or public telecommunications services, in particular their ability to make their services available to the public generally; or

(b) to protect the technical integrity of public telecommunications networks or services.

#### Article SERVIN.5.27: Resolution of telecommunications disputes

1. Each Party shall ensure that, in the event of a dispute arising between suppliers of telecommunications networks or telecommunications services in connection with rights and obligations that arise from this Section, and upon request of either party involved in the dispute, the telecommunications regulatory authority issues a binding decision within a reasonable timeframe to resolve the dispute.

2. The decision by the telecommunications regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based and shall have the right of appeal referred to in Article SERVIN.5.23(4).

3. The procedure referred to in paragraphs 1 and 2 shall not preclude either party concerned from bringing an action before a judicial authority.

#### Article SERVIN.5.28: Competitive safeguards on major suppliers

Each Party shall introduce or maintain appropriate measures for the purpose of preventing suppliers of telecommunications networks or telecommunications services who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices. These anti-competitive practices shall include in particular:

(a) engaging in anti-competitive cross-subsidisation;

(b) using information obtained from competitors with anti-competitive results; and

(c) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

#### Article SERVIN.5.29: Interconnection with major suppliers

1. Each Party shall ensure that major suppliers of public telecommunications networks or public telecommunications services provide interconnection at any technically feasible point in the network. Such interconnection shall be provided:

(a) under non-discriminatory terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) and of a quality no less favourable than that provided for the own like services of such major supplier, or for like services of its subsidiaries or other affiliates;

(b) in a timely fashion, on terms and conditions (including as regards rates, technical standards, specifications, quality and maintenance) that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network elements or facilities that it does not require for the service to be provided; and

(c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. The procedures applicable for interconnection to a major supplier shall be made publicly available.

3. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers as appropriate.

#### Article SERVIN.5.30: Access to major suppliers' essential facilities

Each Party shall ensure that a major supplier in its territory makes its essential facilities available to suppliers of telecommunications networks or telecommunications services on reasonable and non-discriminatory terms and conditions for the purpose of providing public telecommunications services, except when this is not necessary to achieve effective competition on the basis of the facts collected and the assessment of the market conducted by the telecommunications regulatory authority. The major supplier's essential facilities may include network elements, leased circuits services and associated facilities.

#### Article SERVIN.5.31: Scarce Resources

1. Each Party shall ensure that the allocation and granting of rights of use of scarce resources, including radio spectrum, numbers and rights of way, is carried out in an open, objective, timely, transparent, non-discriminatory and proportionate manner and by taking into account general interest objectives. Procedures, and conditions and obligations attached to rights of use, shall be based on objective, transparent, non-discriminatory and proportionate criteria.

2. The current use of allocated frequency bands shall be made publicly available, but detailed identification of radio spectrum allocated for specific government uses is not required.

3. The Parties understand that measures of a Party allocating and assigning spectrum and managing frequency are not in and of themselves inconsistent with Articles SERVIN.2.2 and 3.2 [Market Access]. Each Party retains the right to establish and apply spectrum and frequency management measures that may have the effect of limiting the number of suppliers of telecommunications services, provided that it does so in a manner consistent with this Agreement. This includes the ability to allocate frequency bands taking into account current and future needs and spectrum availability.

#### Article SERVIN.5.32: Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain and to decide on their scope and implementation.

2. Each Party shall administer the universal service obligations in a proportionate, transparent, objective and non-discriminatory way, which is neutral with respect to competition and not more burdensome than necessary for the kind of universal service defined by the Party.

3. Each Party shall ensure that procedures for the designation of universal service suppliers are open to all suppliers of public telecommunications networks or public telecommunications services. Such designation shall be made through an efficient, transparent and non-discriminatory mechanism.

4. If a Party decides to compensate the universal service suppliers, it shall ensure that such compensation does not exceed the net cost caused by the universal service obligation.

#### Article SERVIN.5.33: Number portability

Each Party shall ensure that suppliers of public telecommunications services provide number portability on reasonable terms and conditions.

#### Article SERVIN.5.34: Open Internet access

Each Party shall ensure that, subject to its law, suppliers of Internet access services enable users of those services to:

- (a) access and distribute information and content, use and provide applications and services of their choice, subject to non-discriminatory, reasonable, transparent and proportionate network management; and
- (b) use devices of their choice, provided that such devices do not harm the security of other devices, the network or services provided over the network.

#### Article SERVIN.5.35: Confidentiality of information

1. Each Party shall ensure that suppliers that acquire information from another supplier in the process of negotiating arrangements pursuant to Articles SERVIN.5.25 (Interconnection), SERVIN.5.26 (Access and use), SERVIN.5.29 (Interconnection with major suppliers and SERVIN.5.30 [Access to major suppliers' essential facilities] use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.

2. Each Party shall ensure the confidentiality of communications and related traffic data transmitted in the use of public telecommunications networks or public telecommunications services, subject to the requirement that measures applied to that end do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

#### Article SERVIN.5.36: Foreign shareholding

With regard to the provision of telecommunications networks or telecommunications services through establishment and notwithstanding Article SERVIN.2.7 [Non-conforming Measures], a Party shall not impose joint venture requirements or limit the participation of foreign capital in terms of maximum percentage limits on foreign shareholding or the total value of individual or aggregate foreign investment.

### *Section 5: Financial Services*

#### Article SERVIN.5.37: Scope

1. This Section shall apply to measures of a Party affecting the supply of financial services in addition to Chapters 1, 2, 3 and 4 of this Title, and to Sections A and B of the present Chapter.

2. For the purposes of this Section, "activities performed in the exercise of governmental authority" referred to in point (g) of Article SERVIN.1.2 [General Definitions – Scope] means the following:

- (a) activities conducted by a central bank or a monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (b) activities forming part of a statutory system of social security or public retirement plans; and
- (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Party or its public entities.

3. For the purposes of the application of point (g) of Article SERVIN.1.2 [Definitions] to this Section, if a Party allows any of the activities referred to in points (b) or (c) of paragraph 2 to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "activities performed in the exercise of governmental authority" shall not include those activities.

4. Point (a) of Article SERVIN.1.2 [Definitions] does not apply to services covered by this Section.

#### Article SERVIN.5.38: Definitions

For the purposes of this Title:

(a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party and includes the following activities:

- (i) insurance and insurance-related services
  - (A) direct insurance (including co-insurance):
    - (aa) life;
    - (bb) non-life;
  - (B) reinsurance and retrocession;
  - (C) insurance intermediation, such as brokerage and agency; and
  - (D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
- (ii) banking and other financial services (excluding insurance):
  - (A) acceptance of deposits and other repayable funds from the public;
  - (B) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
  - (C) financial leasing;
  - (D) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;



- (E) guarantees and commitments;
- (F) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (1) money market instruments (including cheques, bills, certificates of deposits);
  - (2) foreign exchange;
  - (3) derivative products including, but not limited to, futures and options;
  - (4) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (5) transferable securities;
  - (6) other negotiable instruments and financial assets, including bullion;
- (G) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (H) money broking;
- (I) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (J) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
- (K) provision and transfer of financial information, and financial data processing and related software; and
- (L) advisory, intermediation and other auxiliary financial services on all the activities listed in points (A) through (K), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(b) “financial service supplier” means any natural or legal person of a Party that seeks to supply or supplies financial services and does not include a public entity;

(c) “public entity” means:

- (i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
- (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;

(d) “new financial service” means a service of a financial nature including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party; and

(e) “self-regulatory organisation” means any non-governmental body, including a securities or futures exchange or market, clearing agency, other organisation or association, that exercises regulatory or supervisory authority over financial service suppliers by statute or delegation from central, regional or local governments or authorities, where applicable.

#### Article SERVIN.5.39: Prudential Carve-out

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures for prudential reasons, such as:

- (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
- (b) ensuring the integrity and stability of a Party’s financial system.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party’s commitments or obligations under the Agreement.

#### Article SERVIN.5.40: Specific Exceptions

1. Nothing in this Agreement shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party’s obligations under Articles SERVIN.2.6 (Performance Requirements), (Transfers) and (Payments and Transfers).

2. [Without prejudice to [AML provisions]], nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

#### Article SERVIN.5.41: International Standards

The Parties shall make their best endeavours to ensure that internationally agreed standards in the financial services sector for regulation and supervision, for the fight against money laundering and terrorist financing and for the fight against tax evasion and avoidance, are implemented and applied in their territory. Such internationally agreed standards are, inter alia, those adopted by the G20, the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS), in particular its “Core Principle for Effective Banking Supervision”, the International Association of Insurance Supervisors (IAIS), in particular its “Insurance Core Principles”, the International Organisation of Securities Commissions (IOSCO), in particular its “Objectives and Principles of Securities Regulation”, the Financial Action Task Force (FATF), and the Global Forum on Transparency and Exchange of Information for Tax Purposes.

#### Article SERVIN.5.42: Financial Services new to the Territory of a Party

1. Each Party shall permit a financial service supplier of the other Party established in its territory to supply any new financial service that it would permit its own financial service suppliers to supply in accordance with its law in like situations, provided that the introduction of the new financial service does not require the adoption of a new law or amendment of an existing law. This shall not apply to branches of the other Party established in the territory of a Party.

2. A Party may determine the institutional and legal form through which the service may be supplied and require authorisation for the supply of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

#### Article SERVIN.5.43: Self-regulatory Organisations

Where a Party requires membership of, participation in, or access to, any self-regulatory organisation in order for financial service suppliers of the other Party to supply financial services in its territory, the Party shall ensure observance by that self-regulatory organisation of the obligations under Articles SERVIN.2.3 (National Treatment), 2.4 (Most Favoured Nation Treatment), and 3.3 (National Treatment), [and 3.4 (Most Favoured Nation Treatment)].

#### Article SERVIN.5.44: Clearing and Payment Systems

Under terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article shall not confer access to the Party's lender of last resort facilities.

### *Section 6: International Maritime Transport Services*

#### Article SERVIN.5.45: Scope and definitions

1. This Section shall apply to measures of a Party affecting the supply of international maritime transport services in addition to Chapters 2, 3 and 4 of this Title.

2. For the purposes of this Section and Chapters 2, 3 and 4 of this Title:

(a) "international maritime transport services" means the transport of passengers or cargo by sea-going vessels between a port of one Party and a port of the other Party or of a third country, or between ports of different Member States of the European Union, including the direct contracting with providers of other transport services, with a view to cover door-to-door or multimodal transport operations under a single transport document, but does not include the right to provide such other transport services;

(b) "door-to-door or multimodal transport operations" means the transport of cargo using more than one mode of transport, involving an international sea-leg, under a single transport document;

(c) "international cargo" means cargo transported between a port of one Party and a port of the other Party or of a third country, or between ports of different Member States of the Union;

(d) "maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services;

(e) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators but not including the direct activities of dockers if the workforce is organised independently of the stevedoring or terminal operator companies; the activities covered include the organisation and supervision of:

(i) the loading or discharging of cargo to or from a ship;

- (ii) the lashing or unlashings of cargo; and
  - (iii) the reception or delivery and safekeeping of cargoes before shipment or after discharge;
- (f) "customs clearance services" means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, irrespective of whether this service is the main activity of the service supplier or a usual complement of its main activity;
- (g) "container station and depot services" means activities consisting in storing, stuffing, stripping or repairing of containers and making containers available for shipment, whether in port areas or inland;
- (h) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
- (i) marketing and sales of maritime transport and related services, from quotation to invoicing, issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation and provision of business information; and
  - (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required.
- (i) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the arrangement of transport and related services, preparation of documentation and provision of business information;
- (j) "feeder services" means the pre- and onward transportation by sea of international cargo, including containerised, break bulk and dry or liquid bulk cargo, between ports located in the territory of a Party, provided such international cargo is "en route", that is, directed to a destination, or coming from a port of shipment, outside the territory of that Party; and
- (k) "port services" means services provided inside a maritime port area or on the waterway access to such area by the managing body of a port, its subcontractors, or other service providers to support the transport of cargo or passengers.

#### Article SERVIN.5.46: Obligations

1. Without prejudice to non-conforming measures or other measures referred to in Articles SERVIN.2.7 and 3.5 [Non-conforming Measures], each Party shall implement the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis by:

- (a) according to ships flying the flag of the other Party, or operated by service suppliers of the other Party, treatment no less favourable than that accorded to its own ships, with regard to, inter alia:
  - (i) access to ports;
  - (ii) the use of port infrastructure;

- (iii) the use of maritime auxiliary services; and
- (iv) customs facilities and the assignment of berths and facilities for loading and unloading;

including related fees and charges;

(b) making available to international maritime transport suppliers of the other Party, on terms and conditions which are both reasonable and no less favourable than those applicable to its own suppliers or vessels or to vessels or suppliers of a third country (including fees and charges, specifications and quality of the service to be provided), the following port services: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, emergency repair facilities, anchorage, berth, berthing and unberthing services and shore-based operational services essential to ship operations, including communications, water and electrical supplies;

(c) permitting international maritime transport service suppliers of the other Party, subject to the authorisation by the competent authority where applicable, to re-position owned or leased empty containers, which are not being carried as cargo against payment, between ports of the United Kingdom or between ports of a Member State of the Union; and

(d) permitting international maritime transport service suppliers of the other Party to provide feeder services between their national ports, subject to the authorisation by the competent authority where applicable.

2. In applying the principle referred to in paragraph 1, a Party shall not:

(a) introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; or

(b) adopt or maintain a measure that requires all or part of any international cargo to be transported exclusively by vessels registered in that Party or owned or controlled by natural persons of that Party.

## *TITLE VII: DIGITAL TRADE*

### Chapter one: General Provisions

#### Article DIGIT.1: Objective

The objective of the Title is to facilitate digital trade, address unjustified barriers to trade enabled by electronic means and ensure an open, secure and trustworthy online environment for businesses and consumers.

#### Article DIGIT.2: Scope

1. This Title applies to measures of a Party affecting trade enabled by electronic means.
2. This Title does not apply to audio-visual services.

### Article DIGIT.3: Right to regulate

The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.

### Article DIGIT.4: Exceptions

For greater certainty, nothing in this Title prevents Parties from adopting or maintaining measures in accordance with Article EXC.1 [general exceptions], Article FINPROV.4 [security exceptions] and Article SERVIN.5.39 [prudential carve-out] for the public interest reasons set out therein.

### Article DIGIT.5: Definitions

1. The definitions in Article SERVIN-1.2 [Definitions] of the Title VI on Services and Investment apply to this Title.
2. The definition of "public telecommunications service" in point (j) of Article SERVIN.5.22 of Chapter 5 of Title VI [Services and Investment] applies to this Title.
3. For the purposes of this Title:
  - (a) "consumer" means any natural person using a public telecommunications service for other than professional purposes;
  - (b) "direct marketing communication" means any form of commercial advertising by which a natural or legal person communicates marketing messages directly to a user via a public telecommunications service and covers at least electronic mail and text and multimedia messages (SMS and MMS);
  - (c) "electronic authentication" means an electronic process that enables the confirmation of:
    - (i) the electronic identification of a natural or legal person, or
    - (ii) the origin and integrity of data in electronic form;
  - (d) "electronic seal" means data in electronic form used by a legal person which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity;
  - (e) "electronic signature" means data in electronic form which is attached to or logically associated with other data in electronic form that:
    - (i) is used by a natural person to agree on the data in electronic form to which it relates; and
    - (ii) is linked to the data in electronic form to which it relates in such a way that any subsequent alteration in the data is detectable;
  - (f) "electronic trust service" means an electronic service consisting of:
    - (i) the creation, verification and validation of electronic signatures, electronic seals, electronic time stamps, electronic registered delivery services and certificates related to those services;

- (ii) the creation, verification and validation of certificates for website authentication; or
- (iii) the preservation of electronic signatures, seals or certificates related to those services;

(g) "user" means any natural or legal person using a public telecommunications service.

## Chapter two: Data flows and personal data protection

### Article DIGIT.6 Cross-border data flows

1. The Parties are committed to ensuring cross-border data flows to facilitate trade in the digital economy. To that end, cross-border data flows shall not be restricted between the Parties by a Party:
  - (a) requiring the use of computing facilities or network elements in the Party's territory for the processing of data, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of the Party;
  - (b) requiring the localisation of data in the Party's territory for storage or processing;
  - (c) prohibiting the storage or processing of data in the territory of the other Party; or
  - (d) making the cross-border transfer of data contingent upon use of computing facilities or network elements in the Party's territory or upon localisation requirements in the Party's territory.
2. The Parties shall keep the implementation of this provision under review and assess its functioning within three years of the entry into force of this Agreement. A Party may at any time propose to the other Party to review the list of restrictions listed in paragraph 1. Such request shall be accorded sympathetic consideration.

### Article DIGIT.7 Protection of personal data and privacy

1. Each Party recognises that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to trust in the digital economy and to the development of trade.
2. Each Party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Nothing in this Agreement shall affect the protection of personal data and privacy afforded by the Parties' respective safeguards.
3. Each Party shall inform the other Party about any safeguard referred to in paragraph 2 that it adopts or maintains.
4. For the purposes of this Agreement, "personal data" means any information relating to an identified or identifiable natural person. [N.B. This term is also defined elsewhere in the Agreement; it is kept here for the purposes of the negotiations]

## Chapter three: Specific provisions

#### Article DIGIT.8: Customs duties on electronic transmissions

1. Electronic transmissions shall be considered as a supply of services within the meaning of Title VI [Services and Investment].
2. The Parties shall not impose customs duties on electronic transmissions.

#### Article DIGIT.9: No prior authorisation

1. A Party shall not require prior authorisation of the provision of a service by electronic means solely on the ground that a service is provided online, or adopt or maintain any other requirement having an equivalent effect.

A service is provided online when it is provided by electronic means and without the parties being simultaneously present.

2. Paragraph 1 does not apply to telecommunications services, broadcasting services, gambling services, legal representation services or to services of notaries or equivalent professions to the extent that they involve a direct and specific connection with the exercise of public authority.

#### Article DIGIT.10: Conclusion of contracts by electronic means

1. Each Party shall ensure that contracts may be concluded by electronic means and that its law neither creates obstacles for the use of electronic contracts nor results in contracts being deprived of legal effect and validity solely on the ground that the contract has been made by electronic means.
2. Paragraph 1 does not apply to the following:
  - (a) broadcasting services;
  - (b) gambling services;
  - (c) legal representation services;
  - (d) services of notaries or equivalent professions involving a direct and specific connection with the exercise of public authority;
  - (e) contracts that establish or transfer rights in real estate;
  - (f) contracts requiring by law the involvement of courts, public authorities or professions exercising public authority;
  - (g) contracts of suretyship granted, collateral securities furnished by persons acting for purposes outside their trade, business or profession; or
  - (h) contracts governed by family law or by the law of succession.

#### Article DIGIT.11: Electronic authentication and electronic trust services

1. A Party shall not deny the legal effect and admissibility as evidence in legal proceedings of an electronic document, an electronic signature, an electronic seal or an electronic time stamp or of data sent and received using an electronic registered delivery service solely on the ground that it is in electronic form.
2. A Party shall not adopt or maintain measures that would:



- (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their transaction; or
- (b) prevent parties to an electronic transaction from being able to prove to judicial and administrative authorities that the use of electronic authentication or an electronic trust service in that transaction complies with the applicable legal requirements.

3. Notwithstanding paragraph 2, a Party may require that for a particular category of transactions, the method of electronic authentication or trust service is certified by an authority accredited in accordance with its law or meets certain performance standards which shall be objective, transparent and non-discriminatory and only relate to the specific characteristics of the category of transactions concerned.

#### Article DIGIT.12: Transfer of or access to source code

1. A Party shall not require the transfer of, or access to, the source code of software owned by a natural or juridical person of the other Party.
2. For greater certainty,
  - (a) the general exceptions, security exceptions and prudential carve-out referred to in Article DIGIT.4 apply to measures of a Party adopted or maintained in the context of a certification procedure, and
  - (b) Paragraph 1 does not apply to the voluntary transfer of, or granting of access to, source code on a commercial basis by a natural or legal person of the other Party, such as in the context of a public procurement transaction or a freely negotiated contract.
3. Nothing in this Article shall affect:
  - (a) requirements by a court, administrative tribunal, or competition authority to remedy a violation of competition law;
  - (b) the protection and enforcement of intellectual property rights; and
  - (c) the right of a Party to take measures in accordance with Article III of the WTO Government Procurement Agreement as incorporated by Article PPROC.2 of Title X of this Agreement.

#### Article DIGIT.13: Online consumer trust

1. Recognising the importance of enhancing consumer trust in digital trade, each Party shall adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions, including but not limited to measures that:
  - (a) proscribe fraudulent and deceptive commercial practices;
  - (b) require suppliers of goods and services to act in good faith and abide by fair commercial practices, including through the prohibition of charging consumers for unsolicited goods and services;
  - (c) require suppliers of goods or services to provide consumers with clear and thorough information, including when they act through intermediary service suppliers, regarding their identity and contact details, the transaction concerned, including the main characteristics of the goods or services and the full price inclusive of all applicable charges, and the applicable consumer rights

(in the case of intermediary service suppliers, this includes enabling the provision of such information by the supplier of goods or services); and

(d) grant consumers access to redress for breaches of their rights, including a right to remedies if goods or services are paid for and are not delivered or provided as agreed.

2. The Parties recognise the importance of entrusting their consumer protection agencies or other relevant bodies with adequate enforcement powers and the importance of cooperation between these agencies in order to protect consumers and enhance online consumer trust.

#### Article DIGIT.14: Unsolicited direct marketing communications

1. Each Party shall ensure that users are effectively protected against unsolicited direct marketing communications.

2. Each Party shall ensure that direct marketing communications are not sent to users who are natural persons unless they have given their consent in accordance with each Party's laws to receiving such communications.

3. Notwithstanding paragraph 2, a Party shall allow natural or legal persons who have collected, in accordance with conditions laid down in the the law of that Party, the contact details of a user in the context of the supply of goods or services, to send direct marketing communications to that user for their own similar goods or services.

4. Each Party shall ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable users to request cessation free of charge and at any moment.

5. Each Party shall provide users with access to redress against suppliers of direct marketing communications that do not comply with the measures adopted or maintained pursuant to paragraphs 1 to 4.

#### Article DIGIT.15: Cooperation on regulatory issues with regard to digital trade

1. The Parties shall exchange information on regulatory matters in the context of digital trade, which shall address the following:

- (a) the recognition and facilitation of interoperable electronic trust and authentication services;
- (b) the treatment of direct marketing communications;
- (c) the protection of consumers; and
- (d) any other matter relevant for the development of digital trade.

2. Paragraph 1 shall not apply to a Party's rules and safeguards for the protection of personal data and privacy, including on cross-border transfers of personal data.

### *TITLE VIII: CAPITAL MOVEMENTS, PAYMENTS, TRANSFERS AND TEMPORARY SAFEGUARD MEASURES*

#### Article CAP.1: Objectives

The objective of this Title is to enable the free movement of capital and payments related to transactions liberalised under this Agreement.

#### Article CAP.2: Current Account

Without prejudice to other provisions of this Agreement, each Party shall allow, in freely convertible currency and in accordance with the Agreement of the International Monetary Fund, any payments and transfers with respect to transactions on the current account of the balance of payments that fall within the scope of this Agreement.

#### Article CAP.3: Capital Movements

1. Without prejudice to other provisions of this Agreement, each Party shall allow, with regard to transactions on the capital and financial account of the balance of payments, the free movement of capital for the purpose of liberalisation of investment and other transactions as provided for in Title VI [Services and Investment].

2. The Parties shall consult each other in the Specialised Committee on Capital Movements to facilitate the movement of capital between them in order to promote trade and investment.

#### Article CAP.4: Measures affecting capital movements, payments or transfers

1. Articles CAP.2 [current account] and CAP.3 [capital movements] shall not be construed as preventing a Party from applying its laws and regulations relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, or futures, options and other financial instruments;
- (c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offenses, deceptive or fraudulent practices;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or
- (f) social security, public retirement or compulsory savings schemes.

2. The laws and regulations referred to in paragraph 1 shall not be applied in an arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

#### Article CAP.5: Temporary safeguard measures

1. In exceptional circumstances of serious difficulties for the operation of the Union's economic and monetary union, or threat thereof, the Union may adopt or maintain safeguard measures with regard to capital movements, payments or transfers for a period not exceeding six months.

2. The measures referred to in paragraph 1 shall be limited to the extent that is strictly necessary.

#### Article CAP.6: Restrictions in case of balance of payments and external financing difficulties

1. If a Party experiences serious balance of payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures with regard to capital movements, payments or transfers.<sup>26</sup>

---

<sup>26</sup> For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be

2. The measures referred to in paragraph 1 shall:
  - (a) be consistent with the Agreement of the International Monetary Fund;
  - (b) not exceed those necessary to deal with the circumstances described in paragraph 1;
  - (c) be temporary and phased out progressively as the situation specified in paragraph 1 improves;
  - (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Party; and
  - (e) be non-discriminatory compared to third countries in like situations.
3. In the case of trade in goods, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with General Agreement on Tariffs and Trade and the Understanding on the Balance of Payments provisions of the General Agreement on Tariffs and Trade 1994.
4. In the case of trade in services, each Party may adopt or maintain restrictive measures in order to safeguard its external financial position or balance of payments. Those measures shall be in accordance with Article XII of General Agreement on Tariffs and Services.
5. A Party maintaining or having adopted measures referred to in paragraphs 1 and 2 shall promptly notify them to the other Party.
6. If a Party adopts or maintains restrictions under this Article, the Parties shall promptly hold consultations in the Specialised Committee on Capital Movements unless consultations are held in other fora. The Committee shall assess the balance of payments or external financial difficulty that led to the respective measures, taking into account such factors as:
  - (a) the nature and extent of the difficulties;
  - (b) the external economic and trading environment; and
  - (c) alternative corrective measures which may be available.
7. The consultations under paragraph 6 shall address the compliance of any restrictive measures with paragraphs 1 and 2. All relevant findings of statistical or factual nature presented by the IMF, where available, shall be accepted and conclusions shall take into account the assessment by the IMF of the balance of payments and the external financial situation of the Party concerned.

## *TITLE IX: INTELLECTUAL PROPERTY*

### Chapter one: General Provisions

#### Article IP.1: Objectives

The objectives of this Title are to:

- (a) facilitate the production, the provision and commercialisation of innovative and creative products and services between the Parties by reducing distortions and impediments to such trade,

---

caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

thereby contributing to a more sustainable and inclusive economy; and

(b) ensure an adequate and effective level of protection and enforcement of intellectual property rights.

#### Article IP.2: Scope

1. This Title shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.

2. This Title does not preclude either Party from introducing more extensive protection and enforcement of intellectual property rights than required under this Title, provided that such protection and enforcement does not contravene this Title.

#### Article IP.3: Definitions

For the purposes of this Title, the following definitions apply:

(a) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C to the WTO Agreement;

(b) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967;

(c) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 revised at Paris on 24 July 1971 and amended on 28 September 1979;

(d) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;

(e) "WIPO" means the World Intellectual Property Organisation;

(f) ["GATT 1994" means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A of the WTO Agreement];

(g) "intellectual property rights" means all categories of intellectual property that are covered by Articles IP.7 to IP.46 of this Title and Sections 1 to 7 of Part II of the TRIPS Agreement, including protection against unfair competition as referred to in Article 10bis of the Paris Convention;

(h) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party.

#### Article IP.4: International agreements

1. The Parties shall comply with their commitments under the following international agreements:

(a) the TRIPS Agreement;

(b) the WIPO Copyright Treaty done at Geneva on 20 December 1996;

(c) the WIPO Performances and Phonograms Treaty done at Geneva on 20 December 1996;

- (d) the Trademark Law Treaty done at Geneva on 27 October 1994.
2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:
- (a) the Treaty on Audiovisual Performances adopted in Beijing on 24 June 2012;
- (b) the Singapore Treaty on the Law of Trademarks done at Singapore on 27 March 2006;
- (c) the Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled adopted in Marrakesh on 28 June 2013;
- (d) the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications and Regulations adopted in Geneva on 20 May 2015.
3. Each Party shall ensure that the procedures provided under the following international agreements are available in its territory:
- (a) the Protocol related to the Madrid Agreement concerning the International Registration of Marks adopted at Madrid on 27 June 1889 as amended on 3 October 2006 and on 12 November 2007;
- (b) the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs of 2 July 1999.

#### Article IP.5: Exhaustion

1. Each Party shall provide for a regime of national or regional exhaustion of intellectual property rights.
2. In the area of copyright and related rights, exhaustion of rights applies only to the distribution to the public by sale or otherwise of the original of works or of other protected subject matter or of copies thereof.

#### Article IP.6: National treatment

1. In respect of the intellectual property rights covered by this Title, each Party shall accord to the nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights, subject, where applicable, to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits done at Washington, on 26 May 1989.
2. For the purposes of paragraph 1, "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Title, including measures to prevent the circumvention of effective technological measures referred to in Article IP.16 [Protection of technological measures] and measures concerning rights management information referred to in Article IP.17 [Obligations concerning rights management information].
3. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, if such exceptions are:

- (a) necessary to secure compliance with the Party's laws or regulations which are not inconsistent with this Title; or
  - (b) not applied in a manner which would constitute a disguised restriction on trade.
4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

## Chapter two: Standards concerning intellectual property rights

### *Section 1: Copyright and Related Rights*

#### Article IP.7: Authors

Each Party shall provide authors with the exclusive right to authorise or prohibit:

- (a) direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their works;
- (b) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof;
- (c) any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (d) the commercial rental to the public of originals or copies of their works.

#### Article IP.8: Performers

Each Party shall provide performers with the exclusive right to authorise or prohibit:

- (a) the fixation of their performances;
- (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;
- (c) the distribution to the public, by sale or otherwise, of the fixations of their performances;
- (d) the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (e) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation;
- (f) the commercial rental to the public of the fixation of their performances.

#### Article IP.9: Producers of phonograms

Each Party shall provide phonogram producers with the exclusive right to authorise or prohibit:

- (a) the direct or indirect, temporary or permanent, reproduction by any means and in any form, in whole or in part, of their phonograms;

- (b) the distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;
- (c) the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (d) the commercial rental of their phonograms to the public.

#### Article IP.10: Broadcasting organisations

Each Party shall provide broadcasting organisations with the exclusive right to authorise or prohibit:

- (a) the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite, in such a way that members of the public may access them from a place and at a time individually chosen by them;
- (d) the distribution to the public, by sale or otherwise, of fixations, including copies thereof, of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;
- (e) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

#### Article IP.11: Broadcasting and communication to the public of phonograms published for commercial purposes

1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or communication to the public.
2. Each Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. Each Party may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.
3. Each Party may grant more extensive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.

#### Article IP.12: Term of protection

1. The rights of an author of a work shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.



2. The term of protection of a musical composition with words shall expire 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the respective musical composition with words.
3. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
4. In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
5. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.
6. The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.
7. The rights of performers shall expire 50 years after the date of the fixation of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the term of protection shall be calculated from the date of the first such publication or the first such communication to the public, whichever is the earlier. With respect to the fixation of the performance in a phonogram, the term of protection shall be 70 years after the date of the first such publication or the first such communication to the public, whichever is the earlier.
8. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram has been lawfully published or lawfully communicated to the public within this period, the said rights shall expire 70 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. Each Party may adopt or maintain effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.
9. The terms laid down in this Article shall be counted from the first of January of the year following the year of the event which gives rise to them.
10. Each Party may provide for longer terms of protection than those provided for in this Article.

#### Article IP.13: Resale right

1. Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale, where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.

4. The procedure for collection of the remuneration and their amounts shall be determined by the law of each Party.

#### Article IP.14: Collective management of rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purpose of fostering the availability of works and other protected subject matter in their respective territories and the transfer of rights revenue between the respective collective management organisations for the use of such works or other protected subject matter.

2. The Parties shall promote transparency of collective management organisations, in particular regarding rights revenue they collect, deductions they apply to rights revenue they collect, the use of the rights revenue collected, the distribution policy and their repertoire.

3. Each Party shall ensure that collective management organisations established in its territory and representing another collective management organisation established in the territory of the other Party by way of a representation agreement, are encouraged to accurately, regularly and diligently pay amounts owed to the represented collective management organisations as well as provide the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to this rights revenue.

#### Article IP.15: Exceptions and limitations

Each Party shall confine limitations or exceptions to the rights set out in Articles IP.7 [Authors] to IP.10 [Broadcasting organisations] to certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holders.

#### Article IP.16: Protection of technological measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

(a) are promoted, advertised or marketed for the purpose of circumvention of; or

(b) have only a limited commercially significant purpose or use other than to circumvent; or

(c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures.

3. For the purposes of this Section, the expression "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or related right as provided for by the law of a Party. Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled

by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.

4. Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by the rightholders, including agreements between rightholders and other parties concerned, each Party may take appropriate measures, as necessary, to ensure that the adequate legal protection against the circumvention of effective technological measures provided for in accordance with this Article does not prevent beneficiaries of exceptions or limitations provided for in accordance with Article IP.15 [Exceptions and limitations] from enjoying such exceptions or limitations.

#### Article IP.17: Obligations concerning rights management information

1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected pursuant to this Section from which electronic rights-management information has been removed or altered without authority;

if such person knows, or has reasonable grounds to know, that by so doing he or she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by the law of a Party.

2. For the purposes of this Article, "rights-management information" means any information provided by right-holders which identifies the work or other subject-matter referred to in this Article, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

3. Paragraph 2 shall apply if any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Article.

### *Section 2: Trade marks*

#### Article IP.18: Trade mark classification

Each Party shall maintain a trade mark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as amended and revised.

#### Article IP.19: Signs of which a trade mark may consist

A trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

- (a) distinguishing the goods or services of one undertaking from those of other undertakings; and
- (b) being represented on the respective trade mark register of each Party, in a manner which

enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

#### Article IP.20: Rights conferred by a trade mark

1. Each Party shall provide that the registration of a trade mark confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having the proprietor's consent from using in the course of trade:

(a) any sign which is identical with the registered trade mark in relation to goods or services which are identical with those for which the trade mark is registered;

(b) any sign where, because of its identity with, or similarity to, the registered trade mark and the identity or similarity of the goods or services covered by this trade mark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the registered trade mark.

2. The proprietor of a registered trade mark shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Party where the trade mark is registered without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorization a trade mark which is identical to the trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark.

3. The entitlement of the proprietor of a trade mark pursuant to paragraph 2 shall lapse if during the proceedings to determine whether the registered trade mark has been infringed, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

#### Article IP.21: Registration procedure

1. Each Party shall provide for a system for the registration of trade marks in which each final negative decision, included partial refusal, taken by the relevant trade mark administration shall be communicated in writing to the relevant party, duly reasoned and subject to appeal.

2. Each Party shall provide for the possibility for third parties to oppose trade mark applications or, where appropriate, trade mark registrations. Such opposition proceedings shall be adversarial.

3. Each Party shall provide a publicly available electronic database of trade mark applications and trade mark registrations.

#### Article IP.22: Well-known trade marks

For the purpose of giving effect to protection of well-known trade marks, as referred to in Article 6*bis* of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

#### Article IP.23: Exceptions to the rights conferred by a trade mark

1. Each Party shall provide for limited exceptions to the rights conferred by a trade mark such as the fair use of descriptive terms including geographical indications, and may provide other limited

exceptions, provided such exceptions take account of the legitimate interests of the proprietor of the trade mark and of third parties.

2. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

- (a) the name or address of the third party, where the third party is a natural person;
- (b) signs or indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;
- (c) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts;

provided the third party uses them in accordance with honest practices in industrial or commercial matters.

3. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Party in question and within the limits of the territory in which it is recognised.

#### Article IP.24: Grounds for revocation

1. Each Party shall provide that a trade mark shall be liable to revocation if, within a continuous period of five years, the trade mark has not been put to genuine use in the relevant territory of a Party in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. However, no person may claim that the proprietor's rights in a trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trade mark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.

2. A trade mark shall also be liable to revocation if, after the date on which it was registered:

- (a) in consequence of acts or inactivity of the proprietor, the trade mark has become the common name in the trade for a good or service in respect of which it is registered;
- (b) in consequence of the use made of the trade mark by the proprietor of the trade mark or with proprietor's consent in respect of the goods or services for which it is registered, the trade mark is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

#### Article IP.25: Bad faith applications

A trade mark shall be liable to be declared invalid where the application for registration of the trade mark was made in bad faith by the applicant. Each Party may provide that such a trade mark shall not be registered.

### *Section 3: Design*

#### Article IP.26: Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new and original. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Section.

For the purpose of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the protected design or using articles bearing or embodying the protected design where such acts are undertaken for commercial purposes.

3. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

4. For the purposes of point (a) of paragraph 3, "normal use" means use by the end user, excluding maintenance, servicing or repair work.

#### Article IP.27: Duration of protection

The duration of protection available, including renewals, shall amount to a total term of 25 years from the date of filing the application.

#### Article IP.28: Protection of unregistered designs

1. Each Party shall confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory. Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product.

2. The duration of protection available for the unregistered design shall amount to at least three years as from the date on which the design was first made available to the public in the territory of the respective Party.

#### Article IP.29: Exceptions and exclusions

1. Each Party may provide limited exceptions to the protection of designs, including unregistered designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of designs, and do not unreasonably prejudice the legitimate interests of the holder of the design, taking account of the legitimate interests of third parties.

2. Design protection shall not extend to designs solely dictated by its technical or functional considerations. A design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

3. By way of derogation from paragraph 2, a design shall, under the conditions set out in paragraph 1 of Article IP.26, subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

#### Article IP.30: Relationship to copyright

Each Party shall ensure that a design, including an unregistered design, shall also be eligible for protection under the law of copyright of a Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

#### *Section 4: Geographical Indications*

#### Article IP.31: Relation with the Withdrawal Agreement

The United Kingdom reaffirms its commitments under Article 54(2) of the Withdrawal Agreement with respect to geographical indications (including designations of origin).

#### Article IP.32: Domestic legislation

1. Having examined the legislation of the United Kingdom listed in Section A of ANNEX IP-A, the Union concludes that this legislation meets the elements laid down in Section B of ANNEX IP-A.

2. Having examined the Union legislation listed in Section A of ANNEX IP-A, the United Kingdom concludes that this legislation meets the elements laid down in Section B of ANNEX IP-A.

#### Article IP.33: Recognition of geographical indications

1. Geographical indications, as defined in Article 22(1) of the TRIPS Agreement, originating in the territories of the Parties and registered by the Parties after the end of the transition period provided for by the Withdrawal Agreement, under the legislations referred to in Article IP.32 [Domestic legislation], including amendments to these geographical indications or to geographical indications protected by virtue of Article 54(2) of the Withdrawal Agreement, shall be listed in ANNEX IP-C.

2. The Specialised Committee on Intellectual Property shall list the geographical indications in ANNEX IP-C following the completion of an opposition procedure in accordance with the criteria set out in ANNEX IP-B and an examination to the satisfaction of both Parties.

3. The Specialised Committee on intellectual Property may also delete the geographical indications listed in ANNEX IP-C.

[Placeholder: for the procedure to be followed by the Specialised Committee]

#### Article IP.34: Protection of geographical indications

1. Geographical indications listed in ANNEX IP-C, shall be protected against:

(a) any direct or indirect commercial use of a protected name:

(i) for comparable products not compliant with the product specification of the protected name, or

(ii) in so far as such use exploits the reputation of a geographical indication, including if

the corresponding product is used as an ingredient;

(b) any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated, transcribed or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation”, “flavour”, “like” or similar;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin, including when those products are used as an ingredient;

(d) any other practice liable to mislead the consumer as to the true origin of the product or which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

2. Geographical indications listed in ANNEX IP-C, shall not become generic in the territories of the Parties.

3. Nothing in this Agreement shall oblige a Party to protect a geographical indication of the other Party which is not, or ceases to be protected in the territory of origin. Each Party shall notify the other Party if a geographical indication ceases to be protected in the territory of that Party of origin. Such notification shall take place in accordance with procedures laid down in paragraph 3 of Article IP.33 [Recognition of geographical indications].

4. Nothing in this Agreement shall prejudice the right of any person to use, in the course of trade, that person’s name or that person’s predecessor in business, except where such name is used in such a manner to mislead the public.

5. Geographical indications of a Party shall be protected under this Section by the other Party if covered by the scope of its domestic legislation referred to in Article IP.32 [Domestic legislation].

#### Article IP.35: Right of use of geographical indications

1. A name protected under this Section may be used by any operator marketing a product, which complies with the corresponding specification.

2. Once a geographical indication is protected under this Section, the use of such protected name shall not be subject to any registration of users or further charges.

#### Article IP.36: Relationship with trade marks

1. Each Party shall, where a geographical indication is protected under this Section, refuse to register a trade mark the use of which would contravene paragraph 1 of Article IP.34 [Protection of geographical indications], provided that an application to register the trade mark is submitted after the date of submission of the application for protection of the geographical indication in the territory of the Party concerned.

2. Trade marks registered in breach of paragraph 1 shall be invalidated.

3. For geographical indications referred to in Article IP.33 [Recognition of geographical indications], the date of submission of the application for protection referred to in paragraph 1 shall be the date of the transmission of a request to the other Party to protect a geographical indication.

4. Without prejudice to paragraph 6 of this Article, each Party shall protect geographical



indications also where a prior trade mark exists. A prior trade mark shall mean a trade mark the use of which contravenes paragraph 1 of Article IP.34 [Protection of geographical indications] which has been applied for, registered or established by use, if that possibility is provided for by the legislation of the Parties, in good faith in the territory of one Party before the date on which the application for protection of the geographical indication is submitted by the other Party under this Section.

5. Such prior trade mark may continue to be used and renewed for that product notwithstanding the protection of the geographical indication, if no grounds for the trade mark's invalidity or revocation exist in the legislation on trade marks of the Parties. In such cases, the use of the protected geographical indication shall be permitted as well as the use of the relevant trade mark.

6. A Party shall not be required to protect a name as a geographical indication under this Section if, in light of a trade mark's reputation and renown and the length of time it has been used, that name is liable to mislead the consumer as to the true identity of the product.

#### Article IP.37: Administrative and judicial enforcement

Each Party shall ensure that its administrative and judicial authorities are competent to take appropriate measures to prevent or stop the unlawful use of protected geographical indications. Each Party shall ensure that such measures are available by administrative action or at the request of an interested party.

Each Party shall ensure that geographical indications are recognised as a prior title that shall prevent the registration or use of a domain name in bad faith, the registration or use of which would be liable to lead to infringements of paragraph 1 of Article IP.34 [Protection of geographical indications].

#### Article IP.38: Other provisions

1. A Party shall not be required to protect a name as a geographical indication under this Section if that name conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true identity of the product.

2. A wholly or partially homonymous name, which misleads consumers into believing that a product originates from another territory, shall not be protected even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which wholly or partially homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

3. When a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of that third country which is wholly or partially homonymous with a geographical indication of the other Party protected under this Section, it shall inform the other Party thereof and give it an opportunity to comment before the third country's geographical indication becomes protected.

4. A product specification referred to in this Section shall be that approved, including any amendments also approved, by the authorities of the Party in the territory from which the product originates.

5. Any matter arising from product specifications of protected geographical indications shall be dealt with in the Specialised Committee on Intellectual Property.

6. Geographical indications protected under this Title may only be cancelled by the Party in which the product originates.
7. No fees shall be charged for the protection of geographical indications under this Title.

#### *Section 5: Patents*

##### Article IP.39: Patents and public health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Ministerial Conference of the WTO at Doha (referred to as the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Section, each Party shall ensure consistency with the Doha Declaration.
2. Each Party shall implement Article 31bis of the TRIPS Agreement, as well as the Annex and Appendix to the Annex related thereto, which entered into force on 23 January 2017.

##### Article IP.40: Extension of the period of protection conferred by a patent on medicinal products

1. The Parties recognise that medicinal products protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their respective markets. The Parties recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.
2. Each Party shall provide for further protection, in accordance with its laws and regulations, for a product which is protected by a patent and which has been subject to an administrative authorisation procedure referred to in paragraph 1 to compensate the holder of a patent for the reduction of effective patent protection. The duration of such further protection may not exceed 5 years. This maximum duration is without prejudice to a possible further extension of the period of protection in the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information.
3. For the purpose of this Title, medicinal product shall mean: (a) any substance or combination of substances presented as having properties for treating or preventing disease in human beings or animals; or (b) any substance or combination of substances which may be used in or administered to human beings or animals either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.

##### Article IP.41: Extension of the period of protection conferred by a patent on plant protection products

1. The Parties recognise that plant protection products protected by a patent in their respective territory may be subject to an administrative authorisation procedure determining safety and efficacy of the plant protection products before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.
2. Each Party shall provide for further protection, in accordance with its laws and regulations, for a plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure to compensate the holder of a patent for the reduction of

effective patent protection. The duration of such further protection may not exceed 5 years.

### *Section 6: Protection of Undisclosed Information*

#### Article IP.42: Protection of trade secrets

1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.

2. For the purpose of this Section:

(a) "Trade-secret" means information which meets all of the following requirements:

(i) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(ii) it has commercial value because it is secret; and

(iii) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

(b) "Trade secret holder" means any natural or legal person lawfully controlling a trade secret.

3. For the purpose of this Section, at least the following conducts shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(i) having acquired the trade secret in a manner referred to in point (a);

(ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or

(iii) being in breach of a contractual or any other duty to limit the use of the trade secret;

(c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of point (b).

4. Nothing in this Section shall be understood as requiring any Party to consider any of the following conducts as contrary to honest commercial practices:

(a) independent discovery or creation;

(b) reverse engineering of a product that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit

the acquisition of the trade secret;

- (c) acquisition, use or disclosure of a trade secret required or allowed by the law of each Party;
- (d) exercise of the right of workers or workers' representatives to information and consultation in accordance with the laws and regulations of that Party.

5. Nothing in this Section shall be understood as affecting the exercise of freedom of expression and information, including the freedom and pluralism of the media, as protected in each Party, restricting the mobility of employees, or as affecting the autonomy of social partners and their right to enter into collective agreements, in accordance with the laws and regulations of the Parties.

#### Article IP.43: Civil judicial procedures and remedies of trade secrets

1. Each Party shall ensure that any person participating in the civil judicial proceedings referred to in Article IP.42(1) (scope of protection of trade secrets), or who has access to documents which form part of those proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.

Each Party shall ensure that the obligation remains in force after the civil judicial proceedings have ended, for as long as appropriate.

2. In the civil judicial proceedings referred to Article IP.42(1), each Party shall provide that its judicial authorities have the authority at least to:

- (a) order provisional measures, in accordance with their respective laws and regulations, to cease and prohibit the use or disclosure of the trade secret in a manner contrary to honest commercial practices;

- (b) order measures, in accordance with their respective laws and regulations, ordering the cessation of, or as the case may be, the prohibition of the use or disclosure of the trade secret in a manner contrary to honest commercial practices;

- (c) order, in accordance with their respective laws and regulations, the any person that has acquired, used or disclosed a trade secret in a manner contrary to honest commercial practices and that knew or ought to have known that he, she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;

- (d) take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in proceedings referred to in Article IP.42(1). Such specific measures may include, in accordance with each Party's respective laws and regulations, including the rights of defence, the possibility of restricting access to certain documents in whole or in part; of restricting access to hearings and their corresponding records or transcript; and of making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted.

- (e) impose sanctions on any person participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.

3. Each Party shall ensure that an application for the measure, procedures or remedies provided

for in this Article is dismissed where the alleged acquisition, use or disclosure of a trade secret contrary to honest commercial practices was carried out, in accordance with its laws and regulations:

- (a) to reveal misconduct, wrongdoing or illegal activity for the purpose of protecting the general public interest;
- (b) disclosure by employees to their representatives as part of, and necessary for, the legitimate exercise by those representatives of their functions;
- (c) to protect a legitimate interest recognised by the laws and regulations of that Party.

Article IP.44: Protection of data submitted to obtain an authorisation to put a medicinal product on the market

1. Each Party shall protect commercially confidential information submitted to obtain an authorisation to place medicinal products on the market ("marketing authorisation") against disclosure to third parties, unless steps are taken to ensure that the data are protected against unfair commercial use and except where the disclosure is necessary for an overriding public interest.

2. Each Party shall ensure that for a period determined under its domestic law from the date of a first marketing authorisation in the Party concerned, a medicinal product subsequently authorised on the basis of the results of pre-clinical tests and clinical trials submitted in the application for the first marketing authorisation shall not be placed on the market without the explicit consent of the holder of the first marketing authorisation, unless international agreements recognised by the Parties provide otherwise.

3. This Article is without prejudice to additional periods of protection which each Party may provide in that Party's law.

Article IP.45: Protection of data submitted to obtain marketing authorisation for plant protection products or biocidal products

1. Each Party shall recognise a temporary right of the owner of a test or study report submitted for the first time to achieve a marketing authorisation concerning safety and efficacy of an active substance, plant protection product or biocidal product. During such period, the test or study report shall not be used for the benefit of any other person aiming to achieve a marketing authorisation for an active substance, plant protection product or biocidal product, except if the explicit consent of the first owner is proved. This right shall be hereinafter referred as data protection.

2. The test or study report submitted for marketing authorisation of an active substance or plant protection product should fulfil the following conditions:

- (a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops; and
- (b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.

3. The period of data protection shall be at least 10 years from the grant of the first authorisation by a relevant authority in the territory of the Party.

4. Each Party shall ensure that the public bodies responsible for the granting of a marketing authorisation will not use the information referred to in paragraphs 1 and 2 for the benefit of a subsequent applicant for any successive marketing authorisation, regardless whether or not it has

been made available to the public.

5. Each Party shall establish rules to avoid duplicative testing on vertebrate animals.

#### *Section 7: Plant Varieties*

##### Article IP.46: Protection of plant varieties rights

Each Party shall protect plant varieties rights in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on 19 March 1991, (the "1991 UPOV Act"). The Parties shall cooperate to promote and enforce these rights.

#### Chapter three: Enforcement of intellectual property rights

##### *Section 1: Civil and Administrative Enforcement*

##### Article IP.47: General obligations

1. Each Party shall provide under its respective law for measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.

For the purposes of Chapter 3, the term "intellectual property rights" shall not include rights covered by Section 6 of Chapter 2.

2. The measures, procedures and remedies referred to in paragraph 1 shall:
  - (a) be fair and equitable;
  - (b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;
  - (c) be effective, proportionate and dissuasive;
  - (d) be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article IP.48: Persons entitled to apply for the application of the measures, procedures and remedies

Each Party shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this Section:

- (a) the holders of intellectual property rights in accordance with the law of a Party;
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of a Party; and
- (c) federations and associations, in so far as permitted by and in accordance with the law of a Party.

The term "federations and associations" shall include at least collective rights management bodies and professional defence bodies which are regularly recognised as having the right to represent holders of intellectual property rights.

#### Article IP.49: Measures for preserving evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support his or her claims that his or her intellectual property right has been infringed or is about to be infringed, and subject to appropriate safeguards, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.
2. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.

#### Article IP.50: Evidence

1. Each Party shall take the measures necessary to enable the competent judicial authorities to order, on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, that this evidence be produced by the opposing party, subject to the protection of confidential information.
2. Each Party shall also take the necessary measures to enable the competent judicial authorities to order, where appropriate, in cases of infringement of an intellectual property right committed on a commercial scale, under the same conditions as in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

#### Article IP.51: Right of information

1. Each Party shall ensure that, in the context of civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer or any other person to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.
2. "Any other person" in paragraph 1 means a person who:
  - (a) was found in possession of the infringing goods on a commercial scale;
  - (b) was found to be using the infringing services on a commercial scale;
  - (c) was found to be providing on a commercial scale services used in infringing activities; or
  - (d) was indicated by the person referred to in points (a), (b) or (c), as being involved in the production, manufacture or distribution of the goods or the provision of the services.
3. The information referred to in paragraph 1 shall, as appropriate, comprise:
  - (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
  - (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

4. Paragraphs 1 and 2 shall apply without prejudice to other laws of a Party which:
- (a) grant the right holder rights to receive fuller information;
  - (b) govern the use in civil proceedings of the information communicated pursuant to this Article;
  - (c) govern responsibility for misuse of the right of information;
  - (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit his own participation or that of his close relatives in an infringement of an intellectual property right;
  - (e) govern the protection of confidentiality of information sources or the processing of personal data.

#### Article IP.52: Provisional and precautionary measures

1. Each Party shall ensure that its judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by the law of that Party, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.
2. Each Party shall ensure that its judicial authorities may, at the request of the applicant, order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.
3. In the case of an alleged infringement committed on a commercial scale, each Party shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.
4. Each Party shall ensure that its judicial authorities shall, in respect of the measures referred to in paragraphs 1 – 3, have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

#### Article IP.53: Corrective measures

1. Each Party shall ensure that its judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction or at least the definitive removal from the channels of commerce, of goods that they have found to be infringing an intellectual property right. If appropriate, under the same conditions, the judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.
2. Each Party's judicial authorities shall have the authority to order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.



#### Article IP.54: Injunctions

Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Each Party shall also ensure that the judicial authorities may issue an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

#### Article IP.55: Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article IP.53 [Corrective measures] and/or Article IP.54 [Injunctions], may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

#### Article IP.56: Damages

1. Each Party shall ensure that its judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the rightholder damages appropriate to the actual prejudice suffered by him/her as a result of the infringement.
2. Each Party shall ensure that when its judicial authorities set the damages:
  - (a) they take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or
  - (b) as an alternative to point (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.
3. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

#### Article IP.57: Legal costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

#### Article IP.58: Publication of judicial decisions

Each Party shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

#### Article IP.59: Presumption of authorship or ownership

The Parties shall recognise that for the purposes of applying the measures, procedures and remedies provided for in Chapter 3:

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;
- (b) the provision under (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

#### Article IP.60: Administrative procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

#### *Section 2: Border Enforcement*

#### Article IP.61: Border measures

1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications requesting customs authorities to suspend the release of or detain suspected goods. For the purposes of this Sub-Section, "suspected goods" means goods suspected of infringing trade marks, copyrights and related rights, geographical indications, patents, utility models, industrial designs, topographies of integrated circuits and plant variety rights.
2. Each Party shall have in place electronic systems for the management by customs of the applications granted or recorded.
3. Each Party shall ensure that its customs authorities do not charge a fee to cover the administrative costs resulting from the processing of an application or a recordation.
4. Each Party shall ensure that its customs authorities decide about granting or recording application within a reasonable period of time.
5. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.
6. With respect to goods under customs control, each Party shall ensure that its customs authorities may act upon their own initiative to suspend the release or detain suspected goods.
7. Each Party shall ensure that its customs authorities use risk analysis to identify suspected goods.
8. Each Party shall have in place procedures allowing for the destruction of suspected goods, without there being any need to prior administrative or judicial proceedings for the formal determination of the infringements, where the persons concerned agree or do not oppose to the destruction. In case suspected goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channel in such a manner to avoid any harm to the right holder.
9. Each Party shall have in place procedures allowing for the swift destruction of counterfeit

trade mark and pirated goods sent in postal or express couriers' consignments.

10. Each Party may decide not to apply this Article to import of goods put on the market in another country by or with the consent of the right holders. A Party may exclude from the application of this Article goods of a non-commercial nature contained in travellers' personal luggage.

11. Each Party shall allow its customs authorities to maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.

12. The Parties shall cooperate in respect of international trade in suspected goods. In particular, the Parties shall share information on trade in suspected goods affecting the other Party.

13. Without prejudice to other forms of cooperation, the Protocol on Mutual Administrative Assistance in Customs Matters shall be applicable with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities of a Party are competent in accordance with this Article.

#### Article IP.62: Consistency with GATT and TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this Section, the Parties shall ensure consistency with their obligations under the GATT and TRIPS Agreements and, in particular, with Article V of GATT 1994, Article 41 and Section 4 of the Part III of the TRIPS Agreement.

#### Chapter four: Other Provisions

#### Article IP.63: Modalities of cooperation

1. The Parties shall cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Title.
2. The areas of cooperation include, but are not limited to, the following activities:
  - (a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;
  - (b) exchange of experience on legislative progress, on the enforcement of intellectual property rights and on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;
  - (c) coordination to prevent exports of counterfeit goods, including with other countries;
  - (d) technical assistance, capacity building, exchange and training of personnel;
  - (e) protection and defence of intellectual property rights and the dissemination of information in this regard in, among others, to business circles and civil society;
  - (f) public awareness of consumers and right holders; enhancement of institutional cooperation, particularly between the intellectual property offices;
  - (g) awareness promotion and education of the general public on policies concerning the protection and enforcement of intellectual property rights;

(h) promotion of protection and enforcement of intellectual property rights with public-private collaboration involving small and medium-size enterprises;

(i) formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of intellectual property rights' violations, including the risk to health and safety and the connection to organised crime.

3. Each Party may make publicly available the product specifications, or a summary thereof, and relevant contact points for control or management of geographical indications of the other Party protected pursuant to Section 4 of Chapter 2 [Geographical Indications].

4. The Parties shall, either directly or through the Specialised Committee on Intellectual Property, maintain contact on all matters related to the implementation and functioning of this Title.

#### Article IP.64: Voluntary stakeholder initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringement, including online and in other marketplaces focusing on concrete problems and seeking practical solutions that are realistic, balanced proportionate and fair for all concerned including in the following ways:

(a) each Party shall endeavour to convene stakeholders consensually in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement;

(b) the Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories; and

(c) the Parties shall endeavour to promote open dialogue and cooperation among the Parties' stakeholders, and to encourage the Parties' stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement.

### *TITLE X: PUBLIC PROCUREMENT*

#### Chapter one: Scope

##### Article PPROC.1: Objective

The objective of this Title is to guarantee each Party suppliers' access to increased opportunities to participate in public procurement procedures and to enhance the transparency of public procurement procedures.

##### Article PPROC.2: Incorporation of certain provisions of the GPA and covered procurement

1. The provisions of the World Trade Organisation Agreement on Government Procurement as revised in 2012 ("GPA") that are specified in Section A of ANNEX PPROC-1, including the Annexes of each Party to Appendix I to the GPA, are hereby incorporated into this Title.

2. For the purposes of this Title, "covered procurement" means procurement to which Article II of the GPA applies and, in addition, procurement listed in Section B of ANNEX PPROC-1.

3. With regard to covered procurement, each Party shall apply, *mutatis mutandis*, the provisions of the GPA specified in Section A of ANNEX PPROC-1 to suppliers, goods or services of the other Party.

[Note: Article 2 may require adaptation depending on the status of UK's accession to the GPA at the time of concluding this Agreement]

## Chapter two: Additional rules for covered procurement

### Article PPROC.3: Use of electronic means in procurement

1. Each Party shall ensure that its procuring entities conduct covered procurement by electronic means to the widest extent practicable.

2. A procuring entity is considered as conducting covered procurement by electronic means, if the entity uses electronic means of information and communication for:

- (a) the publication of notices and tender documentation in procurement procedures; and
- (b) the submission of requests to participate and of tenders.

3. Except for specific situations, such electronic means of information and communication shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and not restricting access to the procurement procedure.

4. Each Party shall ensure that its procuring entities receive and process electronic invoices in accordance with its legislation.

### Article PPROC.4: Electronic publication

With regard to covered procurement, all procurement notices including notices of intended procurement, summary notices, notices of planned procurement and contract award notices shall be directly accessible by electronic means, free of charge, through a single point of access on the internet. Each Party shall ensure that the procuring entities transmit all notices by electronic means to the Publications Office of the European Union for publication.

### Article PPROC.5: Self-declarations

1. Each Party shall ensure that at the time of submission of requests to participate or of tenders, procuring entities accept a self-declaration as preliminary evidence that the relevant supplier is not in one of the situations in which a supplier may be excluded and fulfils the conditions for participation.

2. Each Party shall provide a standard form for such self-declarations.

### Article PPROC.6: Certificates and online repository of certificates

1. Where a Party requires evidence that a supplier is not in one of the situations in which a supplier may be excluded and fulfils the conditions for participation, such Party shall ensure that its procuring entities do not unduly reject the respective certificates of the other Party.

2. The submitting bidder shall be authorised, if the other Party does not issue the requested certificate or if such certificate does not cover all the situations in which a supplier may be excluded, to replace that certificate by a declaration on oath or by a solemn declaration made by the person

concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body.

3. Each Party shall, where relevant, provide an official declaration stating that the certificates referred to in this paragraph are not issued or that they are not sufficient to demonstrate that a supplier is not in one of the situations in which a supplier may be excluded and fulfils the conditions for participation.

4. Each Party shall ensure that updated information on how to obtain certificates and other forms of documentary evidence is publicly available in an online repository.

#### Article PPROC.7: Award criteria

1. Without prejudice to laws, regulations or administrative rules of a Party concerning the price of certain goods or the remuneration of certain services, each Party shall ensure that its procuring entities base the award of contracts on the most economically advantageous tender.

2. The most economically advantageous tender, from the point of view of the procuring entity, shall be determined based on the price or cost by using a cost-effectiveness approach, such as life-cycle costing, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental or social aspects, linked to the subject-matter of the procurement in question.

#### Article PPROC.8: Conditions for participation

Each Party shall ensure that where its procuring entities require a supplier, as a condition for participation in a covered procurement, to demonstrate prior experience they do not require that the supplier has such experience in the territory of that Party. To meet this requirement it shall be sufficient for the supplier to demonstrate suitable prior experience in any other territory.

#### Article PPROC.9: Registration systems and qualification procedures

A Party that maintains a supplier registration system, or provides such possibility to a procuring entity, shall ensure that interested suppliers have access to information on the registration system and that they may request registration at any time. Any interested supplier having made a request shall be informed within a reasonable period of time of the decision to grant or reject this request. If the request is rejected, the Party shall ensure that the decision is duly motivated.

#### Article PPROC.10: Selective tendering

Each Party shall ensure that a procuring entity using a selective tendering procedure addresses an invitation to submit a tender to the number of suppliers sufficient to ensure genuine competition.

#### Article PPROC.11: Fostering participation of small and medium-sized enterprises in public procurement

With a view to enhance competition and encourage participation of small and medium-sized enterprises in public procurement, each Party shall:

- (a) ensure that the minimum yearly turnover that a procuring entity may require suppliers to have does not exceed twice the amount of the estimated contract value, except in duly justified cases; and
- (b) encourage the procuring entities to award contracts in the form of separate lots.

The decision to award contracts in the form of separate lots shall not be made with the objective of avoiding the application of the rules in Chapters One and Two of this Title.

#### Article PPROC.12: Abnormally low prices

Each Party shall ensure that where a procuring entity receives a tender with a price that is abnormally low in relation to the object of the contract, it may verify whether the supplier has obtained State aid. In that case, the tender may be rejected on that ground alone unless the supplier is able to prove, within a sufficient time limit set by the procuring entity, that the State aid was granted in compliance with the State aid rules applicable in the jurisdiction of the procuring entity.

#### Article PPROC.13: Environmental, social and labour considerations

1. A Party shall:
  - (a) allow procuring entities to take into account environmental, labour and social considerations throughout the procurement procedure, provided those considerations are as such non-discriminatory, are not applied in a discriminatory manner and are linked to the subject-matter of the contract; and
  - (b) take appropriate measures to ensure compliance with its obligations under environmental, social and labour law, including those established under Title III [Level Playing Field and Sustainability].
2. Each Party shall take appropriate measures to ensure that in the performance of awarded contracts suppliers comply with applicable obligations of environmental, social and labour law.
3. Each Party shall ensure that its procuring entities:
  - (a) may exclude from participation in a procurement procedure any supplier which is not in compliance with the applicable environmental, social and labour law;
  - (b) may decide not to award a contract to the tenderer submitting the economically most advantageous tender if they have established that the tender does not comply with the applicable environmental, social and labour law; and
  - (c) shall, in case of abnormally low tenders, reject the tender, if they have established that the tender is abnormally low as a result of lacking compliance with applicable environmental, social and labour law.

#### Article PPROC.14: Domestic review procedures

1. For the application of Article XVIII of the GPA, each Party shall, as a general rule, provide for a standstill period of at least 10 days between the award and the conclusion of a contract in order to give sufficient time to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement to seek review of the award decision.
2. A Party may require that the person concerned first seek review with the procuring entity. In that case, the Party shall ensure that the submission of such an application for review suspends immediately the possibility for the procuring entity to conclude the contract.
3. Each Party shall empower review bodies independent of the procuring entities to take, at the earliest, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of

the procedure for the award of a contract or the implementation of any decision taken by the procuring entity.

4. Each Party shall, for the cases where a review body has determined that there has been a breach or a failure as referred to in paragraph 1 of Article XVIII of the GPA, adopt or maintain procedures that provide for:

- (a) corrective action consisting of the setting aside or ensuring the setting aside of decisions taken unlawfully by a procuring entity and of declaring ineffective contracts concluded by a procuring entity in violation of this Title; or
- (b) compensation for the loss or damages suffered in accordance with the rules applicable in that Party for such situations.

5. Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made to guarantee procedures whereby any allegedly illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal and independent of both the contracting authority and the review body.

6. The members of such an independent body shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office and their removal. At least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary. The independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by each Party, be legally binding.

### Chapter three: National treatment beyond covered procurement

#### Article PPROC.15: Definitions

1. The “treatment accorded by a Party” under this Chapter means:

- (a) with respect to a regional or local level of the United Kingdom, treatment no less favourable than the most favourable treatment accorded, in like situations, within that regional or local level to suppliers of the United Kingdom; and
- (b) with respect to a Member State of the Union, treatment no less favourable than the most favourable treatment accorded, in like situations, within that Member State to suppliers of that Member State.

2. For the purpose of this Chapter, a “supplier of a Party, which is a legal person” means:

- (a) for the Union, a legal person constituted or organised under the law of the Union or at least one of its Member States and engaged in substantive business operations in the territory of the Union; and
- (b) for the United Kingdom, a legal person constituted or organised under the law of the United Kingdom and engaged in substantive business operations, understood by the European Union, in line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), as equivalent to the concept of "effective and continuous link" with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU, in the territory of the United Kingdom.



#### Article PPROC.16: National treatment of locally established suppliers

Each Party shall ensure that its procuring entities accord, with regard to their procurement, to suppliers of the other Party established in its territory through the constitution, acquisition or maintenance of a legal person treatment no less favourable than they accord to their own like suppliers. This obligation applies to any procurement, including procurement which is not covered procurement in accordance with this Title.

The application of the national treatment obligation provided for in this Article remains subject to security and general exceptions as defined in Article III of the GPA, even if the procurement is not covered procurement in accordance with this Title.

#### Chapter four: Other provisions

#### Article PPROC.17: Modifications and rectifications of market access commitments

Each Party may modify or rectify its market access commitments in its respective Sub-section under Section B of ANNEX PPROC.1 in accordance with the procedures set out in Articles PPROC-18 [Modifications] to PPROC-23 [Amendment of Section ANNEX.PROC].

#### Article PPROC.18: Modifications

1. A Party intending to modify a Sub-section under Section B of ANNEX.PPROC-1, shall:
  - (a) notify the other Party in writing; and
  - (b) include in the notification a proposal for appropriate compensatory adjustments to the other Party to maintain a level of market access commitments comparable to that existing prior to the modification.
2. Notwithstanding point (b) of paragraph 1, a Party is not required to provide compensatory adjustments to the other Party if the proposed modification covers a procuring entity over which the Party has effectively eliminated its control or influence in respect of covered procurement.

A Party's control or influence over the covered procurement of procuring entities is presumed to be effectively eliminated if the procuring entity is exposed to competition on markets to which access is not restricted.

3. The other Party may object the modification referred to in point (a) of paragraph 1 if it disputes that:
  - (a) a compensatory adjustment proposed under point (b) of paragraph 1 is adequate to maintain a comparable level of mutually agreed market access commitments; or
  - (b) the modification covers a procuring entity over which the Party has effectively eliminated its control or influence as provided for in paragraph 2.

The other Party shall object in writing within 45 days of receipt of the notification referred to in point (a) of paragraph 1 or be deemed to have accepted the compensatory adjustment or modification, including for the purposes of Title II [Dispute Settlement] of PART Five of this Agreement.

#### Article PPROC.19: Rectifications

1. The following changes to a Sub-section under Section B of ANNEX.PPROC-1 shall be considered a rectification, provided that they do not affect the mutually agreed market access commitments provided for in this Title:

- (a) a change in the name of a procuring entity;
- (b) a merger of two or more procuring entities listed within that Sub-section; and
- (c) the separation of a procuring entity listed in that Sub-section into two or more procuring entities that are added to the procuring entities listed in the same Sub-section.

2. A Party may notify the other Party of an objection to a proposed rectification within 45 days from having received the notification. A Party submitting an objection shall set out the reasons for considering the proposed rectification not as a change provided for in paragraph 1, and describe the effect of the proposed rectification on the mutually agreed market access commitments provided for in this Title. If no such objection is submitted in writing within 45 days after having received the notification, the Party shall be deemed to have agreed to the proposed rectification.

#### Article PPROC.20: Consultations and Dispute resolution

If a Party objects to the proposed modification or the proposed compensatory adjustments referred to in Article PPROC.18 [Modifications] or to the proposed rectification referred to in Article PPROC.19 [Rectifications], the Parties shall seek to resolve the issue through consultations. If no agreement is found within 60 days of receipt of the objection, the Party seeking to modify or rectify its Sub-section under Section B of ANNEX.PPROC-1 may refer the matter to dispute settlement in accordance with Title II [dispute settlement] of PART Five of this Agreement, to determine whether the objection is justified.

#### Article PPROC.21: Amendment of Section B of ANNEX.PPROC-1

If a Party does not object to the modification pursuant to paragraph 3 of Article PPROC.18 [Modifications] or to a rectification pursuant to paragraph 2 of Article PPROC.21 [Rectifications], the modifications or rectifications are agreed between the Parties through the consultations referred to in Article PPROC.19 [Rectifications], or there is a final settlement of the matter under Title II of PART Five [dispute settlement] of this Agreement, the Specialised Committee on public procurement referred to in Title I [institutional framework] of PART Five shall amend the relevant Sub-section under Section B of ANNEX PPROC.1 to reflect the corresponding modifications or rectifications or the compensatory adjustments.

#### Article PPROC.22: Cooperation

1. The Parties recognise the benefits that may arise from cooperating in the international promotion of the mutual liberalisation of public procurement markets.
2. The Parties shall make available to each other annual statistics on covered procurement.

## TITLE XI: MOBILITY OF NATURAL PERSONS

### Article MOBI.1: Objective

The objective of this Title is to provide mobility arrangements between the Parties, to ensure the full reciprocity of these arrangements and non-discrimination among the Member States, and to ensure the coordination of social security systems of the Parties.

### Article MOBI.2: Definitions

For the purposes of this Title, the following definitions apply:

(a) 'Citizen of the United Kingdom' means a person who is a British citizen pursuant to the British Nationality Act 1981 and holds a passport issued by the authorities of the United Kingdom competent for the territory referred to in [Article FINPROV.1[Territorial scope]];

(b) 'research' means an activity for which a doctoral degree or an appropriate higher education qualification giving access to doctoral programmes is required;

(c) 'study' means the pursuit as a main activity of a full-time course leading to a higher education qualification recognised by the competent authorities, including preparatory courses or compulsory training prior to such education;

(d) 'training' means an activity for the purpose of gaining knowledge, practice and experience in a professional environment of a holder of a degree of higher education or of a student;

(e) 'youth exchange' means, in the United Kingdom, the pursuit of an activity as allowed under the Youth Mobility Scheme visa (Tier 5) and, in the Member States bound by Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, voluntary service in the European Solidarity Corps;

(f) 'visa' means an authorisation issued by a Member State or the United Kingdom in view of an intended stay in their respective territories for short stays of maximum duration as defined in the Parties' domestic legislation, which shall be at least 90 days in any 180-day period.

### Article MOBI.3: Principles

1. Mobility arrangements established in or on the basis of this Agreement shall be based on the principles of non-discrimination between the Member States of the Union, the equal treatment of all Union citizens and full reciprocity between the Parties.

2. These provisions are without prejudice to the specific arrangements between the United Kingdom and Ireland in respect of the Common Travel Area arrangements as they apply between the United Kingdom and Ireland, as referred to in Article 38(2) of the Withdrawal Agreement and in Article 3 of the Protocol on Ireland/Northern Ireland of the Withdrawal Agreement.

### Article MOBI.4: Visa-free travel

1. The Parties shall provide for reciprocal visa-free travel for citizens of the Union and citizens of the United Kingdom when travelling to the territory of the other party for short stays of a maximum duration as defined in the Parties' domestic legislation, which shall be at least 90 days in any 180-day period.

2. Member States may individually decide to impose a visa requirement on citizens of the United Kingdom carrying out a paid activity during their short-term visit in accordance with Article 6(3) of Regulation (EU) 2018/1806 of the European Parliament and the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

For that category of persons, the United Kingdom may decide to impose a visa requirement on the citizens of each Member State individually, in accordance with its domestic legislation.

3. This article applies to holders of a valid ordinary passport.

4. As regards the French Republic, the provisions of this Article shall apply only to the European territory of the French Republic.

5. As regards the Kingdom of the Netherlands, the provisions of this Article shall apply only to the European territory of the Kingdom of the Netherlands.

#### Article MOBI.5: Provisions on mobility of students, researchers, trainees and certain categories of youth exchange

The Parties shall provide for reciprocal conditions of entry to and residence in the territory of the other party, for a period exceeding 90 days, and the rights, of citizens of the Union and citizens of the United Kingdom, and where applicable their family members, for the purpose of research, studies, training and youth exchanges as defined in the Parties' domestic legislation.

#### Article MOBI.6: Social Security Coordination

The Parties shall provide for the coordination of their social security systems in accordance with the Protocol on Social Security Coordination, in order to safeguard the social security entitlements of the persons covered therein.

The Partnership Council may amend the Protocol on Social Security Coordination.

#### Article MOBI.7: Civil justice cooperation in matrimonial, parental responsibility and related family law matters

1. The Parties affirm their common interest in continuing close judicial cooperation in matrimonial, parental responsibility and other related family law matters via the existing international family law conventions (the Hague Conventions).

2. To this end, the Union shall, on a case-by-case basis, invite the United Kingdom to attend relevant meetings of the European Judicial Network in civil and commercial matters as a third country observer pursuant to Article 11a of Council Decision 2001/470/EC of 28 May 2001, when family law matters related to international agreements, to which the United Kingdom and the Union are parties, are discussed by the Network. The United Kingdom's right to participate shall be limited to the relevant part of the meeting.

## TITLE XII: TRANSPORT

### Chapter one: Air transport

## Article AIRTRN.1: Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "air transport" means the carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, held out to the public for remuneration or hire;
- (b) "citizenship determination" means a finding that an air carrier proposing to operate air services under this chapter satisfies the requirements of Article AIRTRN.8 [ownership and control of air carriers] of this chapter regarding its ownership, effective control, and principal place of business;
- (c) "fitness determination" means a finding that an air carrier proposing to operate air services under this chapter has satisfactory financial capability and adequate managerial expertise to operate such services and is disposed to comply with the laws, regulations, and requirements that govern the operation of such services;
- (d) "competent authorities" means, for the United Kingdom, the government agencies or entities of the United Kingdom responsible for the regulatory and administrative functions incumbent on the United Kingdom under this chapter; and, for the Union, the government agencies or entities of the Union and the Member States responsible for the regulatory and administrative functions incumbent on the Union under this chapter;
- (e) "The Convention" means the Convention on International Civil Aviation, signed in Chicago on 7 December 1944, and includes:
  - (i) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by the United Kingdom and the Member State or Member States concerned, as is relevant to the issue in question; and
  - (ii) any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for the United Kingdom and the Member State or Member States concerned, as is relevant to the issue in question;
- (f) "full cost" means the cost of the service provided, which may include appropriate amounts for cost of capital and depreciation of assets, as well as the costs of maintenance, operation, management and administration;
- (g) "principal place of business" means the head office or registered office of an air carrier within which the principal financial functions and operational control, including continued airworthiness management, of that air carrier are exercised;
- (h) "effective control" means a relationship constituted by rights, contracts or any other means which, either separately or jointly and having regard to the considerations of fact or law involved, confer the possibility of directly or indirectly exercising a decisive influence on an undertaking, in particular by:
  - (i) the right to use all or part of the assets of an undertaking;
  - (ii) rights or contracts which confer a decisive influence on the composition, voting or decisions of the bodies of an undertaking or otherwise confer a decisive influence on the running of the business of the undertaking;

- (i) "stop for non-traffic purposes" means a landing for any purpose other than taking on board or discharging passengers, baggage, cargo or mail in air transport;
- (j) "tariff" means any fare, rate or charge for the carriage of passengers, baggage or cargo (excluding mail) in air transport (including any other mode of transport in connection therewith) charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
- (k) "user charge" means a charge imposed on air carriers for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities, or noise-related charges and charges to address local air quality problems at or around airports;
- (l) "self-handling" means the performance of ground handling operations by an air carrier directly for himself or for another air carrier where:
  - (i) one holds the majority in the other; or
  - (ii) a single body has a majority holding in each;
- (m) "scheduled air services" means air services scheduled and performed for remuneration according to a published timetable, or so regular or frequent as to constitute a recognisably systematic series, which are open to direct booking by members of the public; and extra section flights occasioned by overflow traffic from scheduled flights;
- (n) "air carrier of the United Kingdom" means an air carrier that fulfils the conditions laid down in subparagraph (a) of paragraph (1) of Article AIRTRN.5 [Operating authorisation];
- (o) "air carrier of the Union" means an air carrier that fulfils the conditions laid down in subparagraph (b) of paragraph (1) of Article AIRTRN.5 [Operating authorisation].
- (p) "ICAO" means the International Civil Aviation Organisation.

#### Article AIRTRN.2: Route schedule

1. Subject to Article AIRTRN.3 [Traffic rights], the Union shall grant the United Kingdom the right for the air carriers of the latter Party to operate, while carrying out air transport, on the routes specified hereunder:

Points in the territory of the United Kingdom – Intermediate Points – Points in the territory of the Union – Points Beyond.

2. Subject to Article AIRTRN.3 [Traffic rights], the United Kingdom shall grant the Union the right for the air carriers of the latter Party to operate, while carrying out air transport, on the routes specified hereunder:

Points in the territory of the Union – Intermediate Points – Points in the territory of the United Kingdom – Points Beyond.

#### Article AIRTRN.3: Traffic rights

1. Each Party shall grant to the other Party the right for the respective air carriers, for the purpose of carrying out air transport on the routes laid down in Article AIRTRN.2 [Route schedule], to:

- (a) fly across their territory without landing;
- (b) make stops in their territory for non-traffic purposes.

2. The United Kingdom shall enjoy the right for its air carriers to make stops in the territory of the Union to provide scheduled and non-scheduled air transport services between any points situated in the territory of the United Kingdom and any points situated in the territory of the Union (third and fourth freedom traffic rights).

3. The Union shall enjoy the right for its air carriers to make stops in the territory of the United Kingdom to provide scheduled and non-scheduled air transport services between any points situated in the territory of the Union and any points situated in the territory of the United Kingdom (third and fourth freedom traffic rights).

4. Neither Party shall unilaterally limit the volume of traffic, frequency, regularity, routing, origin or destination of the air transport services operated in accordance with paragraphs 2 and 3, or the aircraft type or types operated for that purpose, except for customs, technical, operational, air traffic management, safety, environmental or health protection reasons, in a non-discriminatory manner, or unless otherwise provided for in this chapter.

5. Nothing in this chapter shall be deemed to confer on the United Kingdom the right for its carriers to take on board in the territory of the Union passengers, baggage, cargo or mail carried for compensation and destined for another point in the territory of the Union;

6. Nothing in this chapter shall be deemed to confer on the Union the right for its carriers to take on board in the territory of the United Kingdom passengers, baggage, cargo or mail carried for compensation and destined for another point in the territory of the United Kingdom.

7. The competent authorities of the United Kingdom and of the Member States may authorise non-scheduled air transport services beyond the rights provided for in this Article provided that they do not constitute a disguised form of scheduled services.

#### Article AIRTRN.4: Operational flexibility

The rights mutually granted by the Parties in accordance with paragraphs 2 and 3 of Article AIRTRN.3 [traffic rights] shall include, within the limits laid down therein, all of the following prerogatives:

- (a) to operate flights in either or both directions;
- (b) to combine different flight numbers within one aircraft operation;
- (c) to serve points in the route schedule in any combination and in any order;
- (d) to transfer traffic between aircraft of the same air carrier at any point (change of gauge);
- (e) to carry stopover traffic through any points whether within or outside the territory of either Party;
- (f) to carry transit traffic through the territory of the other Party;
- (g) to combine traffic on the same aircraft regardless of where such traffic originates;
- (h) to serve more than one point on the same service (co-terminalisation).

## Article AIRTRN.5: Operating authorisations and technical permissions

1. On receipt of an application for an operating authorisation from an air carrier of a Party, the other Party shall grant the appropriate operating authorisations and technical permissions with minimum procedural delay, provided that all the following conditions are met:

(a) In the case of an air carrier of the United Kingdom:

- (i) the air carrier is owned, directly or through majority ownership, and is effectively controlled by the United Kingdom, its nationals, or both;
- (ii) the air carrier has its principal place of business in the territory of the United Kingdom, and holds a valid operating licence in accordance with the law of the United Kingdom; and
- (iii) effective regulatory control of the air carrier is exercised and maintained by the United Kingdom having issued its air operator certificate and the competent authority is clearly identified.

(b) In the case of an air carrier of the Union:

- (i) the air carrier is owned, directly or through majority ownership, and is effectively controlled by one or more Member States and member states of the European Free Trade Association, by nationals of such states, or by a combination thereof;
- (ii) the air carrier has its principal place of business in the territory of the Union and holds a valid operating licence in accordance with Union law; and
- (iii) effective regulatory control of the air carrier is exercised and maintained by the Member State responsible for issuing its air operator certificate and the competent authority is clearly identified.

(c) Articles AIRTRN.16 [Safety] and AIRTRN.17 [Security] of this Chapter are being complied with, and

(d) the air carrier meets the conditions prescribed under the laws and regulations normally applied to the operation of international air transport by the Party considering the application.

2. In assessing that an air carrier is subject to effective regulatory control a Party may require proof of all relevant factors including, but not limited to, proof that the following conditions are met:

(a) the air carrier concerned meets the criteria of the Party issuing the operating licence or permit for the operation of international air services; and

(b) that Party has and maintains safety and security oversight programmes for that air carrier in compliance with ICAO standards.

3. When granting operating authorisations and technical permissions, the Parties shall treat all carriers of the other Party in a non-discriminatory manner.

4. On receipt of an application for an operating authorisation from an air carrier of a Party, the other Party shall recognise any fitness or citizenship determination made by the first Party with respect to that air carrier as if such determination had been made by its own competent authorities,



and shall not enquire further into such matters, except as provided in paragraph 3 of Article AIRTRN.7 [Refusal, revocation, suspension or limitation of authorisation].

#### Article AIRTRN.6: Operating plans, programmes and schedules

Notification of operating plans, programmes or schedules for air services operated under this chapter may be required by a Party for information purposes only. Where a Party requires such notification, it shall minimise the administrative burden associated with its notification requirements and procedures that is borne by air transport intermediaries and the air carriers of the other Party.

#### Article AIRTRN.7: Refusal, revocation, suspension or limitation of authorisation

1. The Union may take action against an air carrier of the United Kingdom, in accordance with paragraphs 3 to 5 of this Article, in any of the following cases:

- (a) any of the conditions laid down in paragraph 1(a) of Article AIRTRN.5 [Operating authorisations and technical permissions] are not met;
- (b) the air carrier has failed to comply with the laws and regulations referred to in Article AIRTRN.9 [Compliance with laws and regulations] of this chapter.

2. The United Kingdom may take action against an air carrier of the Union in accordance with paragraphs 3 to 5 of this Article in any of the following cases:

- (a) any of the conditions laid down in paragraph 1(b) of Article AIRTRN.5 [Operating authorisations and technical permissions] is not met;
- (b) the air carrier has failed to comply with the laws and regulations referred to in Article AIRTRN.9 [Compliance with laws and regulations] of this chapter.

3. Where a Party has reasonable grounds to believe that an air carrier of the other Party is in any of the situations set out in paragraphs 1 or 2, as the case may be, that Party may request consultations with the other Party.

4. Such consultations shall start as soon as possible, and not later than 30 days of receipt of the request for consultations. Failure to reach a satisfactory agreement within 30 days or an agreed time period from the starting date of such consultations, or failure to take the agreed corrective action, shall constitute grounds for the Party that requested the consultations to take action to refuse, revoke, suspend, impose conditions on or limit the operating authorisation or technical permissions of the air carrier or carriers concerned to ensure compliance with the provisions of Articles AIRTRN.5 [Operating authorisations and technical permissions] and AIRTRN.9 [Compliance with laws and regulations].

5. Notwithstanding paragraphs 3 and 4, in the cases referred to in paragraphs 1(b) and 2(b) a Party may take immediate or urgent action where required by an emergency, or to prevent further non-compliance. Further non-compliance requires that the question of non-compliance has already been raised between the competent authorities of the Parties.

#### Article AIRTRN.8: Ownership and control of air carriers

The Parties recognise the potential benefits of the progressive liberalisation of ownership and control of their respective airlines. The Parties agree to explore in the Specialised Committee on Air Transport, at an opportune juncture, the reciprocal liberalisation of ownership and control of air carriers. As a result of this examination, the Specialised Committee on Air Transport may adopt a

recommendation proposing amendments to this chapter in accordance with Article AIRTRN.24 [Amendments].

#### Article AIRTRN.9: Compliance with laws and regulations

1. The laws and regulations of a Party relating to the admission to, operation within, and departure from its territory of aircraft engaged in international air transport shall be complied with by the air carriers of the other Party while entering, within, or leaving the territory of that Party, respectively.
2. The laws and regulations of a Party relating to the admission to, operation within, or departure from its territory of passengers, crew, baggage, cargo, or mail on aircraft (including regulations relating to entry, clearance, immigration, passports, customs and quarantine, or in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew, baggage, cargo, and mail carried by the air carriers of the other Party while entering, within, or leaving the territory of that Party, respectively.
3. The Parties shall permit, in their respective territory, the air carriers of the other Party to take measures to ensure that only persons with the travel documents required for entry into or transit through the territory of the other Party are carried.

#### Article AIRTRN.10: Fair Competition

1. The Parties agree that it is their joint objective to have a fair and competitive environment in which the air carriers of the Parties enjoy fair and equal opportunities to compete in the provision of air transport services. In order to attain this objective, and without prejudice to Title III of Part two of this Agreement [Level playing field and sustainability], this Article shall apply where the fair and equal opportunities of air carriers are adversely affected due to any of the actions described in paragraph 3.
2. Each Party shall ensure that each of its air carriers providing air transport services under this chapter, if not subject to the obligations provided in [relevant transparency provisions] prepares, and provides to the competent authorities of the other Party upon request, an annual financial report and accompanying financial statement that are independently audited and are in accordance with internationally recognised accounting and corporate financial disclosure standards such as the International Financial Reporting Standards. In any event, aid within the meaning of the acts and provisions listed in ANNEX LPFS-X [List of State aid acts and provisions] shall be separately identified in the financial report.
3. Where a Party (hereinafter referred to as “the initiating Party” for the purposes of this Article) considers that its air carriers’ fair and equal opportunities to compete are adversely affected by any of the following actions, it may proceed in accordance with paragraphs 4 to 7:
  - (a) Any of the practices set out in Articles LPFS.2.11 [Agreements between undertakings] to LPFS.2.14 [Public undertakings, undertakings granted special or exclusive rights and designated monopolies] of Chapter two [Specific areas of level playing field and sustainability] of Title III [Level playing field and sustainability];
  - (b) Aid [declared incompatible by the competent authority] on the basis of the acts and provisions listed in ANNEX LPFS-X [List of State aid acts and provisions];
  - (c) Any form of discrimination;
  - (d) Failure to provide information requested under paragraph 2.

The references contained in points (a) and (b) to other provisions and acts shall be understood, for the purposes of this Article, as if those provisions and acts did not require affectation of trade between the Union and the United Kingdom.

4. The initiating Party shall submit a written request for consultations to the other Party (hereinafter referred to as “the responding Party”). Consultations shall start within a period of 30 days of the receipt of the request, unless otherwise agreed by the Parties.

5. Where the initiating Party and the responding Party fail to reach agreement on the matter within 60 days from the receipt of the request for consultations referred to in paragraph 4, the initiating Party may take measures, including operational restrictions, against all or part of the carriers which have engaged in the contested conduct or which have benefited from the practices in points (a), (b) and (c) of paragraph 3.

6. The measures taken pursuant to paragraph 5 taking into account, as the case may be, any measures already taken in respect of the same facts in accordance with Chapter two [Specific areas of level playing field and sustainability] of Title III [Level playing field and sustainability], shall be appropriate, proportionate and restricted in their scope and duration to what is strictly necessary to mitigate the injury to the carriers of the initiating party and remove the undue advantage gained by the carriers against which they are directed.

7. Where consultations have not resolved the matter or where measures are taken pursuant to paragraph 5, a Party may refer the matter to the dispute settlement procedure laid down in Title II [Dispute settlement] of Part Five. Where measures have been taken to refuse, revoke, suspend or limit the operating authorisation of an air carrier, the urgency procedure laid down in Title II of Part Five [Dispute settlement] shall apply.

8. Nothing in this chapter shall affect, limit or jeopardise in any way either the authority or powers of the authorities in charge of enforcing the competition law of the respective Party, or those of the courts or tribunals which review the decisions of those authorities. Any measure taken pursuant to paragraph 5 of this Article by a Party shall be without prejudice to any possible actions and measures taken by the said authorities and courts or tribunals. The actions and measures of the competition authorities of the Parties and the courts or tribunals which review the decisions of those authorities shall be excluded from the dispute settlement mechanism laid down in Title II of Part Five [dispute settlement].

#### Article AIRTRN.11: Doing business

1. The Parties agree that obstacles to doing business encountered by air carriers would hamper the benefits to be achieved by this chapter. The Parties agree to cooperate in removing obstacles to doing business of air carriers of both Parties where such obstacles may hamper commercial operations, create distortions to competition or affect equal opportunities to compete.

2. The Specialised Committee on Air Transport shall monitor progress in effectively addressing obstacles to doing business matters of air carriers.

#### Article AIRTRN.12: Commercial operations

1. The Parties shall grant each other the rights laid down in paragraphs 2 to 8. For the purposes of the exercise of those rights, the air carriers of each of the Parties shall not be required to retain a local sponsor.

2. As regards air carrier representatives:

- (a) the establishment of offices and facilities by the air carriers of one Party in the territory of the other Party as necessary to provide services under this chapter shall be allowed without restriction or discrimination;
- (b) without prejudice to safety and security regulations, where such offices and facilities are located in an airport they may be subject to limitations on grounds of availability of space;
- (c) a Party shall, in accordance with its laws and regulations relating to entry, residence and employment, authorise the air carriers of the other Party to bring in and maintain in the territory of the authorising Party all managerial, sales, technical, operational, and other specialist staff who are required to support the provision of air transport services under this chapter. Where employment authorisations are required for the personnel referred to in this paragraph, including those performing certain temporary duties, the Parties shall process applications for such authorisations expeditiously, subject to the relevant laws and regulations in force.

3. As regards ground handling:

- (a) a Party shall permit the air carriers of the other Party to perform self-handling in its territory without other restrictions than those based on considerations of safety or security, or otherwise resulting from physical or operational constraints;
- (b) a Party shall not impose on the air carriers of the other Party the choice of one or more providers of ground handling services among those which are present in the market in accordance with the laws and regulations of the Party where the services are provided;
- (c) without prejudice to subparagraph (a), where the laws and regulations of a Party limit or restrict in any way free competition between providers of ground handling services, that Party shall ensure that all necessary ground handling services are available to the air carriers of the other Party and that they are provided under no less favourable terms than those under which they are provided to any other air carrier.

4. As regards the allocation of slots at airports, each Party shall ensure that its regulations, guidelines and procedures for allocation of slots at the airports in its territory are applied in a transparent, effective, non-discriminatory and timely manner.

5. As regards local expenses and transfer of funds:

- (a) the provisions of Title VIII [Capital movements, payments, transfers and temporary safeguard measures] apply to the provisions of this Chapter, without prejudice to Article AIRTRN.5 [Operating authorisations and technical permissions];
- (b) the Parties grant each other the benefits laid down in subparagraphs c) to e);
- (c) the sale and purchase of transport and related services by the air carriers of the Parties shall, at the discretion of the air carrier, be permitted to be denominated in pounds sterling if the sale or purchase take place in the territory of the United Kingdom, or, if the sale or purchase take place in the territory of a Member State, in the currency of that Member State;
- (d) the air carriers of each Party shall be permitted to pay for local expenses in local currency, at their discretion;
- (e) the air carriers of each Party shall be permitted, on demand, to remit revenues obtained in the territory of the other Party at any time, in any way, to the country of their choice. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at

the market rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance and shall not be subject to any charges except those normally made by banks for carrying out such conversion and remittance.

6. As regards cooperative marketing arrangements:

- (a) In operating or holding out services under this chapter, the air carriers of the Parties may enter into cooperative marketing arrangements, such as blocked-space or code-sharing arrangements, with any air carrier or with any surface (land or maritime) transport provider, provided that all the following conditions are fulfilled:
  - (i) the operating carrier holds the appropriate traffic rights;
  - (ii) the marketing carrier holds the appropriate underlying route rights; and
  - (iii) those arrangements meet the requirements normally applied thereto.
- (b) The arrangements referred to in the point (a) may include a domestic leg, provided that, for the marketing carrier, that domestic leg is part of an international journey. For the purpose of this paragraph, a domestic leg means, where the operating carrier is a carrier of the Union, a route within the territory of the Union; and, where the operating carrier is a carrier of the United Kingdom, a route within the territory of the United Kingdom.
- (c) In respect of passenger transport sold involving cooperative marketing arrangements, the purchaser shall be informed upon reservation of the identity of the operating carrier or carriers. Where this is not possible, or in case of change after reservation, the identity of the operating carrier shall be communicated to the passenger as soon as it is established. In all cases, the identity of the operating carrier or carriers shall be communicated to the passenger at check-in, or before boarding where no check-in is required for a connecting flight.

7. As regards intermodal services:

- (a) in relation to the transport of passengers, the Parties shall not subject surface transport providers to laws and regulations governing air transport on the sole basis that such surface transport is held out by an air carrier under its own name;
- (b) air carriers and indirect providers of cargo transport of the Parties shall be permitted, without restriction, and without prejudice to Chapter Three [Road Transport] of this Title, to employ in connection with international air transport any surface transport for cargo to or from any points in the territories of the Parties, or in third countries, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Air carriers may elect to perform their own surface transport or to provide it through arrangements with other surface transport providers, including surface transport operated by other air carriers and indirect providers of cargo air transport. Such inter-modal cargo services may be offered at a single, through price for the air and surface transport combined, provided that shippers are not misled as to the facts concerning such transport.

8. As regards leasing:

- (a) The Parties shall grant each other the right for their air carriers to provide services under this chapter in all the following manners:

- (i) using aircraft leased without crew from any lessor;
  - (ii) using aircraft leased with crew from other air carriers of the same Party as the lessee's;
  - (iii) using aircraft leased with crew from air carriers of a country other than the lessee's Party, provided that the leasing is justified on the basis of exceptional needs, seasonal capacity needs or operational difficulties of the lessee and the leasing does not exceed the duration which is strictly necessary to fulfil those needs or overcome those difficulties.
- (b) The Parties may require leasing arrangements to be approved by their competent authorities for the purpose of verifying compliance with the conditions set out in this paragraph and with the applicable safety and security requirements;
- (c) However, where a Party requires such approval, it shall endeavour to expedite the approval procedures and minimise the administrative burden on the carriers concerned. The provisions of this paragraph are without prejudice to the laws and regulations of a Party as regards the leasing of aircraft by air carriers of that Party.

#### Article AIRTRN.13: Fiscal provisions

1. On arriving in the territory of one Party, aircraft operated in international air transport by the air carriers of the other Party, their regular equipment, fuel, lubricants, consumable technical supplies, ground equipment, spare parts (including engines), aircraft stores (including but not limited to such items as food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transport shall, on the basis of reciprocity, provided that such equipment and supplies remain on board the aircraft, be exempt from all import restrictions, property taxes and capital levies, customs duties, excise taxes, inspection fees, Value Added Tax (VAT) or other similar indirect taxes, and similar fees and charges imposed by the national or local authorities or the Union.
2. The following goods shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph 1:
- (a) aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of an air carrier of the other Party engaged in international air transport, even when these stores are to be used on a part of the journey performed over the said territory;
  - (b) ground equipment and spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of an air carrier of the other Party used in international air transport;
  - (c) fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an air carrier of the other Party engaged in international air transport, even when these supplies are to be used on a part of the journey performed over the said territory; and
  - (d) printed matter, as provided for by the customs legislation of each Party, introduced into or supplied in the territory of one Party and taken on board for use on outbound aircraft of an air carrier of the other Party engaged in international air transport, even when these stores are to be used on a part of the journey performed over the said territory.

3. Nothing in this chapter shall prevent a Party from imposing taxes, levies, duties, fees, or charges on fuel supplied in its territory for use in aircraft that operate between two points in that territory.
4. The regular airborne equipment, as well as the material, supplies and spare parts referred to in paragraph 1 of this Article normally retained on board aircraft operated by an air carrier of one Party may be unloaded in the territory of the other Party only with the approval of the customs authorities of that Party and may be required to be kept under the supervision or control of the said authorities up to such time as they are re-exported or otherwise disposed of in accordance with applicable regulations.
5. The exemptions provided by paragraphs 1 and 2 shall also apply where the air carriers of one Party have contracted with another air carrier, which similarly enjoys such exemptions from the other Party, for the loan or transfer in the territory of the other Party of the items specified in paragraphs 1 and 2.
6. Nothing in this chapter shall prevent either Party from imposing taxes, levies, duties, fees or charges on goods sold other than for consumption on board to passengers during a sector of an air service between two points within its territory at which embarkation or disembarkation is permitted.
7. Baggage and cargo in direct transit across the territory of a Party shall be exempt from taxes, customs duties, fees and other similar charges.
8. Equipment and supplies referred to in paragraph 2 of this Article may be required to be kept under the supervision or control of the competent authorities.
9. The provisions of the respective conventions in force between the United Kingdom and Member States for the avoidance of double taxation on income and on capital remain unaffected by this chapter.
10. Remuneration of a service provided by a Party to an air carrier of the other Party shall not be considered a tax, a levy, a duty, a fee or a charge for the purposes of paragraphs 1, 2 and 7 to the extent that that remuneration is based on the cost of the service provided.

#### Article AIRTRN.14: User charges

1. User charges imposed by one Party on the air carriers of the other Party for the use of air navigation and air traffic control shall be cost-related and non-discriminatory. In any event, any such user charges shall be assessed on the air carriers of the other Party on terms not less favourable than the most favourable terms available to any other air carrier in like circumstances at the time the charges are applied.
2. Without prejudice to paragraph 5 of Article AIRTRN.12 [commercial operations], each Party shall ensure that user charges imposed on the air carriers of the other Party for the use of airport, aviation security and related facilities and services are not discriminatory, and are equitably apportioned among categories of users. These charges shall not exceed the full cost of providing the appropriate airport and aviation security facilities and services at that airport or those airports at which a common charging system applies, plus a reasonable return on assets after depreciation. Facilities and services for which user charges are imposed shall be provided on an efficient and economic basis. In any event, these charges shall be assessed on the air carriers of the other Party on terms no less favourable than the most favourable terms available to any other air carrier in like circumstances at the time the charges are applied.

3. In order to ensure the correct application of the principles set out in paragraphs 1 and 2 each Party shall require the competent charging authorities or bodies in its territory to consult with the air carriers using the services and facilities concerned and to exchange with them such information as may be necessary. The Parties shall ensure that users are provided with reasonable notice of any proposal for changes in user charges to enable them to express their views and provide comments before any changes are made.

#### Article AIRTRN.15: Tariffs

1. The Parties shall permit tariffs to be freely established by the air carriers of the Parties.
2. Either Party may require, on a non-discriminatory basis, notification to its competent authorities of tariffs offered for services originating from its territory by air carriers of both Parties on a simplified basis and for information purposes only. Such notification by the air carriers may be required to be made no earlier than the initial offering of a tariff.

#### Article AIRTRN.16: Aviation safety

1. Certificates of airworthiness, certificates of competency and licences issued or rendered valid by one Party and still in force shall be recognised as valid by the other Party and its aeronautical authorities for the purpose of operating air services under this chapter, provided that such certificates or licences were issued or rendered valid pursuant to, and in conformity with, as a minimum, the relevant international standards established under the Convention.
2. Each Party may at any time request consultations concerning the safety standards maintained and administered by the other Party in areas relating to aeronautical facilities, flight crew, aircraft and the operation of aircraft. Such consultations shall take place within 30 days of the request.
3. Where, following such consultations, the requesting Party finds that the other Party does not effectively maintain and administer safety standards in the areas referred to in paragraph 2 of this Article that are at least equal to the minimum standards established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards. Failure by the other Party to take appropriate corrective action within 15 days or an agreed time period shall constitute grounds for the requesting Party to refuse, revoke, suspend, impose conditions on or limit the operating authorisations or technical permissions, or to otherwise refuse, revoke, suspend, impose conditions on or limit the operations of the air carriers under the safety oversight of the other Party.
4. Any aircraft operated by, or on behalf of, an air carrier of a Party may, while within the territory of the other Party, be the subject of a ramp inspection by the competent authorities of the latter Party, to verify the validity of the relevant aircraft documents and those of its crew members and the apparent condition of the aircraft and its equipment, provided that such examination does not cause unreasonable delay in the operation of the aircraft.
5. If a Party, after carrying out a ramp inspection, finds that an aircraft or the operation of an aircraft does not comply with the minimum standards established pursuant to the Convention, or that there is a lack of effective maintenance and administration of safety standards established pursuant to the Convention, or if it is denied access for ramp inspection, that Party shall notify the competent authorities of the other Party that are responsible for the safety oversight of the air carrier operating the aircraft of such findings and inform them of the steps considered necessary to conform with these minimum standards. Failure to take appropriate corrective action within 15 days or an agreed time period shall constitute grounds for the requesting Party to refuse, revoke,



suspend, impose conditions on or limit the operating authorisations or technical permissions or to otherwise refuse, revoke, suspend, impose conditions on or limit the operations of the air carrier operating the aircraft.

6. Each Party shall have the right to take immediate action including the right to revoke, suspend or limit the operating authorisations or technical permissions or to otherwise suspend or limit the operations of an air carrier of the other Party, if it concludes that such action is necessary in view of an immediate threat to aviation safety. The Party taking such measures shall promptly inform the other Party, providing reasons for its action.

7. Any action by a Party in accordance with paragraphs 3, 5 or 6 shall be discontinued once the basis for the taking of that action ceases to exist.

#### Article AIRTRN.17: Aviation security

1. The Parties shall provide upon request all necessary assistance to each other to address any threat to the security of civil aviation, including the prevention of acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, airports and air navigation facilities, and any other threat to the security of civil aviation.

2. The Parties shall, in their mutual relations, act in conformity with aviation security standards established by the ICAO. They shall require that operators of the aircraft in their registries, operators of aircraft who have their principal place of business or permanent residence in their territory, and the operators of airports in their territory, act, at least, in conformity with such aviation security standards.

3. Each Party shall ensure that effective measures are taken within its territory to protect civil aviation against acts of unlawful interference, including, but not limited to, screening of passengers and their cabin baggage, screening of hold baggage, screening and security controls for persons other than passengers, including crew, and their items carried, screening and security controls for cargo, mail, in-flight and airport supplies, and access control to airside and security restricted areas. Those measures shall be adjusted to meet increases in the threat to the security of civil aviation. Each Party agrees that the security provisions of the other Party relating to the admission to, operating within, or departure from its territory of aircraft must be observed.

4. The Parties shall endeavour to cooperate on aviation security matters to the highest extent, to exchange information on threat, vulnerability and risk, to discuss and share best practices, performance and detection standards of security equipment, compliance monitoring best practices and results, and in any other area that the Parties may identify.

5. Each Party recognises that nothing in this Article limits the ability of a Party to refuse entry into its territory of any flight or flights that it deems to present a threat to its security.

6. Without prejudice to the need to take immediate action in order to protect aviation security, the Parties affirm that, when considering security measures, a Party shall evaluate possible adverse effects on international air transport and, unless constrained by law, shall take such effects into account when it determines what measures are necessary and appropriate to address the security concerns.

7. With regard to air services bound for its territory, and notwithstanding paragraph 5, a Party may not require security measures to be implemented in the territory of the other Party. Where a Party considers that a specific threat urgently requires the implementation of measures in addition to the measures already in place in the territory of the other Party, it shall inform the other Party of the particulars of that threat and the proposed measures. Such measures shall be proportionate and

limited in time. The other Party shall give positive consideration to such a proposal, and may decide to implement additional measures as it deems necessary.

8. When an incident or threat of an incident of unlawful seizure of civil aircraft or other unlawful acts against the safety of aircraft, passengers, crew, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

9. Each Party shall take all measures it finds practicable to ensure that an aircraft subjected to an act of unlawful seizure or other acts of unlawful interference which is on the ground in its territory is detained on the ground unless its departure is necessitated by the overriding duty to protect human life. Where practicable, such measures shall be taken on the basis of consultations between the Parties.

10. Where a Party has reasonable grounds to believe that the other Party has violated the provisions of this Article, that Party may request immediate consultations with the other Party. Such consultations shall start within 30 days of receipt of such a request. Failure to reach a satisfactory agreement within 15 days or an agreed time period from the starting date of such consultations shall constitute grounds for the Party that requested the consultations to take action to refuse, revoke, suspend, impose conditions on or limit the operating authorisation or technical permissions of air carriers of the other Party to ensure compliance with this Article. Where required by an emergency, or to prevent further non-compliance with the provisions of this Article, a Party may take interim action.

11. Any action taken in accordance with paragraph 10 shall be discontinued upon compliance by the other Party with this Article.

#### Article AIRTRN.18: Air traffic management

1. The United Kingdom shall cooperate with the Union, the Member States and the bodies entrusted by the Union with the management of the European air traffic management network in such a way as to enhance the safe and efficient functioning of air traffic in the European region. The United Kingdom shall seek interoperability with the Union service providers.

2. The Parties agree to cooperate on matters concerning the performance and charging of air navigation services and network functions, with a view to optimising overall flight efficiency, reducing costs, minimising environmental impact and enhancing the safety and capacity of air traffic flows between the existing air traffic management systems of the Parties.

3. The Parties agree to promote cooperation between their air navigation service providers in order to exchange flight data and coordinate traffic flows to optimise flight efficiency, with a view to achieving improved predictability, punctuality and service continuity for air traffic.

4. The Parties agree to cooperate on their air traffic management modernisation programmes, including research, development and deployment activities, and encourage cross-participation in validation and demonstration activities with the goal of ensuring global interoperability.

#### Article AIRTRN.19: Air carrier liability

The Parties reaffirm their obligations under the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999 (the Montreal Convention).

#### Article AIRTRN.20: Consumer protection

The United Kingdom shall, within its jurisdiction, afford air passengers no lesser protection of their rights than that they enjoy, *mutatis mutandis*, under the law of the Union. This shall apply in respect of any rules dedicated to air passengers as well as of all other relevant rules, such as general rules on consumer rights, on unfair commercial practices and unfair contract terms as well as package travels.

#### Article AIRTRN.21: Relationship to other agreements

1. Earlier agreements and arrangements relating to the same subject matter as this chapter between the United Kingdom and the Member States, to the extent that they may not have been superseded by the law of the Union, shall be superseded by this Agreement.
2. The United Kingdom and a Member State may not grant each other any rights in connection with air transport to, from or within their respective territories other than those expressly laid down in this chapter, without prejudice to paragraph 7 of Article AIRTRN.3 [traffic rights].
3. If the Parties become party to a multilateral agreement, or endorse a decision adopted by the ICAO or another international organisation, that addresses matters covered by this chapter, they shall consult in the Specialised Committee on Air Transport to determine whether this chapter should be revised to take into account such developments.
4. Nothing in this chapter shall affect the validity and application of existing and future agreements between the Member States and the United Kingdom as regards territories under their respective sovereignty which are not encompassed within the definition of "Territory" in [Reference to Part one – Common provisions].

#### Article AIRTRN.22: Suspension and Termination

Notwithstanding Article INST.21(1): Temporary remedies in case of non-compliance, a suspension of this chapter, in whole or in part, may be implemented no earlier than from the first day of the International Air Transport Association (IATA) traffic season following the season during which the suspension has been notified.

Notwithstanding Article FINPROV.2 [Termination], where this Agreement is terminated, its provisions governing the matters falling within the scope of this chapter shall continue to apply beyond the date of cessation referred to in Article FINPROV.2 [Termination], until the end of the International Air Transport Association (IATA) traffic season in progress on that date.

The Party suspending this chapter, in whole or in part, or terminating this Agreement shall inform the ICAO thereof.

#### Article AIRTRN.23: Registration of the Agreement

This Agreement and any amendments thereto shall, insofar as relevant, be registered with the ICAO, in accordance with Article 83 of the Convention.

#### Article AIRTRN.24: Amendments

Amendments to this agreement may be agreed by the Parties pursuant to consultations within the Specialised Committee on Air Transport. Amendments shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures.

## Chapter two: Aviation safety

### Article AVSAF.1: Objectives

The objectives of this Chapter are to:

- (a) enable the reciprocal acceptance, as provided for in the annexes to this Chapter, of findings of compliance made and certificates issued by either Party's competent authorities or approved organisations;
- (b) promote cooperation toward a high level of civil aviation safety and environmental compatibility;
- (c) facilitate the multinational dimension of the civil aviation industry;
- (d) facilitate and promote the free flow of civil aeronautical products and services.

### Article AVSAF.2: Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "approved organisation" means any legal person certified by the competent authority of either Party to exercise privileges related to the scope of this Chapter;
- (b) "certificate" means any approval, licence or other document issued as a form of recognition of compliance that a civil aeronautical product, an organisation or a legal or natural person complies with the applicable requirements set out in laws and regulations of a Party;
- (c) "civil aeronautical product" means any civil aircraft, aircraft engine, or aircraft propeller; or sub-assembly, appliance, part or component, installed or to be installed thereon;
- (d) "competent authority" means a Union or government agency or a government entity responsible for civil aviation safety that is designated by a Party for the purposes of this Chapter to perform the following functions:
  - (i) to assess the compliance of civil aeronautical products, organisations, facilities, operations and services subject to its oversight with applicable requirements set out in laws, regulations and administrative provisions of that Party;
  - (ii) to conduct monitoring of their continued compliance with those requirements; and
  - (iii) to take enforcement actions to ensure their compliance with those requirements.
- (e) "findings of compliance" means a determination of compliance with the applicable requirements set out in laws and regulations of a Party as the result of actions such as testing, inspections, qualifications, approvals and monitoring;
- (f) "monitoring" means the regular surveillance by a competent authority of a Party to determine continuing compliance with the applicable requirements set out in laws and regulations of that Party; and
- (g) "technical agent" means, for the Union, the European Union Aviation Safety Agency ("EASA"), or its successor, and for the United Kingdom, the United Kingdom Civil Aviation Authority ("CAA"), or its successor.

- (h) “the Convention” means the Convention on International Civil Aviation, signed in Chicago on 7 December 1944, and includes:
- (i) any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by the United Kingdom and the Member State or Member States concerned, as is relevant to the issue in question; and
  - (ii) any annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such annex or amendment is at any given time effective for the United Kingdom and the Member State or Member States concerned, as is relevant to the issue in question.

#### Article AVSAF.3: Scope and implementation

1. The Parties may cooperate in the following areas:
  - (a) the airworthiness certificates and monitoring of civil aeronautical products;
  - (b) environmental certificates and testing of civil aeronautical products;
  - (c) the design and production certificates and monitoring of design and production organisations;
  - (d) the maintenance organisation certificates and monitoring of maintenance organisations;
  - (e) personnel licensing and training;
  - (f) flight simulator qualification evaluation;
  - (g) operation of aircraft; and
  - (h) other areas related to aviation safety subject to Annexes to the Convention.
2. The scope of this Chapter shall be established by way of annexes covering each area of cooperation set out in paragraph 1. The annexes shall be adopted by decision of the Specialised Committee on Aviation Safety.
3. Any annex referred to in paragraph 2 of this Article may only be adopted where both Parties has ensured themselves that the civil aviation standards, rules, practices, procedures and systems of the respective other Party ensures a sufficiently equivalent level of safety to permit acceptance of findings of compliance made and certificates issued by its competent authorities or by organisations approved by that competent authority.
4. Each annex referred to in paragraph 2 of this Article shall describe the terms, conditions and methods for the reciprocal acceptance of findings of compliance and certificates, and, if necessary, transitional arrangements.
5. The technical agents may develop implementation procedures for each individual annex. Technical differences between the Parties' civil aviation standards, rules, practices, procedures and systems shall be addressed in the Annexes and implementation procedures.

#### Article AVSAF.4: General obligations

1. Each Party shall accept findings of compliance made and certificates issued by the other Party's competent authorities or approved organisations, in accordance with the terms and conditions set out in the annexes.
4. Nothing in this Chapter shall entail reciprocal acceptance of the standards or technical regulations of the Parties.
5. Each Party shall ensure that its respective competent authorities remain capable and fulfil their responsibilities under this Chapter.

#### Article AVSAF.5: Preservation of regulatory authority

Nothing in this Chapter shall be construed to limit the authority of a Party to determine, through its legislative, regulatory and administrative measures, the level of protection it considers appropriate for safety and the environment.

#### Article AVSAF.6: Safeguard measures

1. Either Party may take all appropriate and immediate measures whenever it considers that there is a reasonable risk that a civil aeronautical product, a service or any activity within the scope of this Chapter may compromise safety or the environment, may not meet its applicable legislative, regulatory or administrative measures, or may otherwise fail to satisfy a requirement within the scope of the applicable annex to this Chapter .
2. Where either Party takes measures pursuant to paragraph 1 of this Article, it shall inform the other Party in writing within 15 working days of taking such measures, providing reasons for it.

#### Article AVSAF.7: Communication

1. The Parties shall designate and notify each other of a contact point for the communication related to the implementation of this Chapter. All such communications shall be in the English language.
2. The Parties shall notify each other a list of the competent authorities, and an updated list each time this becomes necessary.

#### Article AVSAF.8: Transparency, regulatory cooperation and mutual assistance

1. Each Party shall ensure that the other Party is kept informed of its laws and regulations related to this Chapter and any significant changes to such laws and regulations.
2. The Parties shall to the extent possible inform each other of their proposed significant revisions of their relevant laws, regulations, standards, and requirements, and of their systems for issuing certificates insofar as these revisions may have an impact on this Chapter. To the extent possible, they shall offer each other an opportunity to comment on such revisions and give due consideration to such comments.
3. For the purpose of investigating and resolving specific safety issues, each Party's competent authorities may allow the other Party's competent authorities to participate as observers in each other's oversight activities as specified in the appropriate Annex.

4. For the purpose of monitoring and inspections, each Party's competent authorities shall assist, if necessary, the other Party's competent authorities with the objective of providing unimpeded access to regulated entities subject to its oversight.

5. To ensure the continued confidence by each Party in the reliability of the other Party's processes for findings of compliance, each technical agent may participate as an observer in the other's oversight activities, in accordance with procedures set out in the annexes to this Chapter. This participation shall not amount to a systematic participation in oversight activity of the other Party.

#### Article AVSAF.9: Exchange of safety information

The Parties shall, without prejudice to Article AVSAF.11 [Confidentiality and data protection] and subject to their applicable legislation:

- (a) provide each other, on request and in a timely manner, information available to their technical agents related to accidents, serious incidents or occurrences in relation to civil aeronautical products, services or activities covered by the annexes to this Chapter; and
- (b) exchange other safety information as the technical agents may decide.

#### Article AVSAF.10: Cooperation in enforcement activities

The Parties shall, through their technical agents or competent authorities, provide when requested, subject to applicable laws and regulations, as well as the availability of required resources, mutual cooperation and assistance in investigations or enforcement activities regarding any alleged or suspected violation of laws or regulations falling within the scope of this Chapter. In addition, each Party shall notify the other Party promptly of any investigation when mutual interests are involved.

#### Article AVSAF.11: Confidentiality and protection of data and information

1. Each Party shall, in accordance with its laws and regulations, maintain the confidentiality of data and information received from the other Party under this Chapter. Such data and information may only be used by the Party receiving the data and information for the purposes of this Chapter.

2. In particular, subject to their respective laws and regulations, the Parties shall neither disclose to a third party, including the public, nor permit their competent authorities to disclose to a third party, including the public, any data and information received from the other Party under this Chapter that constitutes trade secrets, intellectual property, confidential commercial or financial information, proprietary data, or information that relates to an ongoing investigation. To this end, such data and information shall be considered to be confidential.

3. A Party or a competent authority of a Party may, when providing data or information to the other Party or a competent authority of the other Party, designate data or information that it considers to be confidential and not to be subject to disclosure. In that case, the Party or its competent authority shall clearly mark such data or information as confidential.

4. If a Party disagrees with the designation made by the other Party or a competent authority of that Party in accordance with paragraph 3 of this Article, the former Party may request consultations with the other Party to address the issue.

5. Each Party shall take all reasonable precautions necessary to protect data and information, received under this Chapter, from unauthorised disclosure.

6. The Party receiving data and information from the other Party under this Chapter shall not acquire any proprietary rights in such data and information by reason of its receipt from the other Party.

#### Article AVSAF.12: Adoption and amendments of Annexes to this Chapter

The Specialised Committee on Aviation Safety may amend ANNEX AVSAF-1 to this Chapter and may adopt or amend annexes as provided for in Article AVSAF.3(2) [Scope and implementation].

#### Article AVSAF.13: Cost recovery

Each Party shall endeavour to ensure that any fees or charges imposed by a Party or its technical agent on a legal or natural person whose activities are covered by this Chapter shall be just, reasonable and commensurate with the services provided, and shall not create a barrier to trade.

#### Article AVSAF.14: Other agreements and prior arrangements

1. Upon entry into force, this Chapter shall supersede any bilateral aviation safety agreements or arrangements between the United Kingdom and the Member States with respect to any matter covered by this Chapter that has been implemented in accordance with Article AVSAF.3 [scope and implementation].
2. The technical agents shall take necessary measures to revise or terminate, as appropriate, prior arrangements between them.
3. Subject to paragraphs 1 and 2, nothing in this Chapter shall affect the rights and obligations of the Parties under any other international agreements

#### Article AVSAF.15: Suspension of reciprocal acceptance obligations

1. A Party shall have the right to suspend, in whole or in part, its acceptance obligations under paragraph 1 of Article AVSAF.4 [General obligations], when the other Party materially violates its obligations under this Chapter.
2. Before exercising its right to suspend its acceptance obligations, a Party shall request consultations for the purpose of seeking corrective measures of the other Party. During the consultations, the Parties shall, where appropriate, consider the effects of the suspension.
3. Rights under this Article shall be exercised only if the other Party fails to take corrective measures within an appropriate period of time following the consultations. If a Party exercises the right, it shall notify the other Party of its intention to suspend the acceptance obligations in writing and detail the reasons for suspension.
4. Such suspension shall take effect 30 days after the date of the notification, unless, prior to the end of this period, the Party which initiated the suspension, notifies the other Party in writing that it is withdrawing its notification.
5. Such suspension shall not affect the validity of findings of compliance made and certificates issued by the competent authorities or approved organisations of the other Party prior to the date the suspension took effect. Any such suspension that has become effective may be rescinded immediately upon an exchange of diplomatic notes to that effect by the Parties.

### Chapter three: Transport of goods by road



#### Article ROAD.1: Objective

The objective of this Chapter is to ensure, as regards the transport of goods by road, continued connectivity between the territories of the Parties and to lay down the rules which are applicable to such transport.

#### Article ROAD.2: Scope

This Chapter applies to the transport of goods by road with a commercial purpose between and through the territories of the Parties and is without prejudice to the application of the rules established by the European Conference of Ministers of Transport.

#### Article ROAD.3: Definitions

For the purposes of this Chapter and in addition to the definitions set out in Article [SERVIN 1.2 of Chapter one of Title VI of Part Two [Services and Investment], the following definitions apply:

- (a) "Vehicle" means a motor vehicle registered in the territory of a Party, or a coupled combination of vehicles of which the motor vehicle is registered in the territory of a Party, and which is used exclusively for the transport of goods;
- (b) "Road haulage operator" means any natural or legal person engaged in the transport of goods with a commercial purpose, by means of a vehicle;
- (c) "Road haulage operator of a Party" means a road haulage operator which is a legal person established in the territory of a Party or a natural person of a Party;
- (d) "Driver" means any person who drives a vehicle even for a short period, or who is carried in a vehicle as part of his duties to be available for driving if necessary.

#### Article ROAD.4: Transport of goods between and through the territories of the Parties

1. Provided the conditions set out in paragraphs 2 and 3 are fulfilled, road haulage operators of a Party may undertake:

- (a) laden journeys with a vehicle from the territory of a Party to the territory of the other Party;
- (b) laden journeys from the territory of a Party to the territory of the same Party with transit through the territory of the other Party;
- (c) unladen journeys in conjunction with the journeys referred to in points (a) and (b).

2. Road haulage operators of a Party may only undertake a journey referred to in paragraph 1:

- (a) if they hold a valid licence issued in accordance with Article ROAD.5 [Operator's license], except in the cases referred to in Article ROAD.6 [Exemptions from licensing requirements]; and
- (b) if the journey is carried out by drivers who hold a Certificate of Professional Competence in accordance with Article ROAD.7(1) [Requirements for drivers].

#### Article ROAD.5: Operator's licence

1. Road haulage operators of a Party undertaking a journey referred to in Article ROAD.4 [Transport of goods between and through the territories of the Parties] shall hold a valid licence issued in accordance with paragraph 2.
2. Licences referred to in paragraph 1 shall only be delivered, in accordance with the law of the Parties, to road haulage operators who comply with the requirements set out in Part A of the ANNEX to this chapter.
3. The Specialised Committee may decide to amend the ANNEX to take account of regulatory developments.

#### Article ROAD.6: Exemptions from licencing requirement

The following types of transport of goods and unladen journeys made in conjunction with such transport may be conducted without a valid licence:

- (a) transport of mail as a universal service;
- (b) transport of vehicles which have suffered damage or breakdown;
- (c) until [...], transport of goods in motor vehicles the permissible laden mass of which, including that of trailers, does not exceed 3,5 tonnes;
- (d) from [...], transport of goods in motor vehicles the permissible laden mass of which, including that of trailers, does not exceed 2,5 tonnes;
- (e) transport of medicinal products, appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters.
- (f) Transport of goods in vehicles provided the following conditions are fulfilled:
  - (i) the goods carried are the property of the road haulage operators or have been sold, bought, let out on hire or hired, produced, extracted, processed or repaired by the operator;
  - (ii) the purpose of the journey is to carry the goods to or from the road haulage operator's premises or to move them, either inside or outside the operator for its own requirements;
  - (iii) the vehicles used for such transport are driven by personnel employed by, or put at the disposal of, the road haulage operator under a contractual obligation;
  - (iv) the vehicles carrying the goods are owned by the road haulage operator, have been bought by it on deferred terms or have been hired; and
  - (v) such transport is only no more than ancillary to the overall activities of the road haulage operator.

#### Article ROAD.7: Requirements for drivers

1. Drivers of the vehicles undertaking journeys with as referred to in Article ROAD.4 [Transport of goods between and through the territories of the Parties] shall:

- (a) hold a Certificate of Professional Competence issued in accordance with Part B of the ANNEX to this chapter; and
  - (b) comply with the rules on driving and working times, rest periods, breaks and the use of tachographs in accordance with Part B of the ANNEX to this chapter.
3. The Specialised Committee may decide to amend the ANNEX to take account of regulatory developments.

#### Article ROAD.8: Requirements for vehicles

1. A Party shall not reject or prohibit the use in its territory of a vehicle undertaking a journey referred to in Article ROAD.4 [Transport of goods between and through the territories of the Parties] if the vehicle complies with the requirements set out in Part C of the ANNEX to this chapter.
2. Vehicles undertaking the journeys referred to in Article ROAD.4 [Transport of goods between and through the territories of the Parties] shall be equipped with a tachograph constructed, installed, used, tested and controlled in accordance with Part C of the ANNEX to this chapter.
3. The Specialised Committee may decide to amend the ANNEX to take account of regulatory and technological developments.

#### Article ROAD.9: Obligations in other chapters

Articles SERVIN 3.2 [Market access] and SERVIN 3.3 of Chapter three of Title VI of Part two [National treatment] are incorporated into and made part of this Chapter and apply to the treatment of road haulage operators undertaking journeys in accordance with Article ROAD.4 [Transport of goods between and through the territories of the Parties].

[Placeholder: Articles on passenger transport by road, if necessary, taking into account Interbus agreement]

#### Chapter four: Rail transport

[Placeholder]

### *TITLE XIII: ENERGY AND RAW MATERIALS*

#### *Section 1: General Provisions*

##### Article ENER.1: Objective

The objective of this Title is to facilitate trade and investment between the Parties in the areas of energy and raw materials, and to improve environmental sustainability, support security of supply and contribute to the fight against climate change in these areas.

##### Article ENER.2: Definitions

For the purposes of this Title, the following definitions apply:

- (a) "authorisation" means the permission, license, concession or similar administrative or contractual instrument by which the competent authority of a Party entitles an entity to exercise a certain economic activity in its territory;
- (b) "energy efficiency" refers to a ratio of output of performance, services, goods or energy, to an input of energy;
- (c) "energy goods" means the goods from which energy is generated listed by the corresponding HS code in ANNEX ENER-1 to this Chapter;
- (d) "entity" refers to any natural person or enterprise or group thereof;
- (e) "raw materials" refers to the goods listed by the corresponding HS code in ANNEX ENER-1 to this Title;
- (f) "renewable energy" refers to a type of energy, including electrical energy, produced from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic) and geothermal energy, ambient energy, tide, wave and other ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas, and biogas;
- (g) "gas distribution" means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;
- (h) "electricity distribution" means the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;
- (i) "transmission" means
  - (i) for gas the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;
  - (ii) for electricity the transport of electricity on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply.
- (l) "distribution system operator" means a natural or legal person who is responsible for operating, ensuring the maintenance of and, if necessary, developing the electricity or gas distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of electricity or gas;
- (m) "transmission system operator" means a natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the electricity or gas transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of gas or electricity;
- (n) "generation" means the production of electricity;
- (o) "balancing" means:

- (i) for electricity systems, all actions and processes, in all timelines, through which electricity transmission system operators ensure, in an ongoing manner, maintenance of the system frequency within a predefined stability range and compliance with the amount of reserves needed with respect to the required quality;
  - (ii) for gas systems, actions undertaken by the transmission system operator to change the gas flows onto or off the transmission network, excluding those actions related to gas unaccounted for as off-taken from the system and gas used by the transmission system operator for the operation of the system;
- (p) “redispatching” means a measure, including curtailment, that is activated by one or more electricity transmission system operators or distribution system operators by altering the generation, load pattern, or both, in order to change physical flows in the electricity system and relieve a physical congestion or otherwise ensure system security;
  - (q) “wholesale electricity markets” means markets for electricity, including over-the-counter markets and electricity exchanges, markets for the trading of energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intraday markets;
  - (r) “wholesale gas markets” means markets for gas, including over-the-counter markets and gas exchanges, markets for the trading of energy, capacity, balancing and ancillary services in all timeframes, including forward, day-ahead and intraday markets;
  - (s) “interconnector” means a transmission line which crosses or spans the border between the parties for the purpose of connecting the transmission systems;
  - (t) “Agency for the Cooperation of Energy Regulators” means the Agency established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators.

#### Article ENER.3: Relationship with Title XIV [Civil Nuclear]

1. The provisions of this Title are without prejudice to Title XIV on Civil Nuclear Cooperation, and the specific tasks of the European Atomic Energy Community.
2. Chapters two [investment liberalisation] and three [cross-border trade in services] of Title VI [Services and Investment] shall apply to energy and raw materials. In the event of any inconsistency between this Title and Title VI [Services and Investment] and the annexes thereto, the latter shall prevail.

#### Article ENER.4: Principles

1. Each Party retains the sovereign right to determine whether areas are available for exploration and production of energy goods and raw materials in its territory, determined in accordance with its law and the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.
2. Each Party preserves the right to adopt, maintain and enforce measures necessary to securing the supply of energy goods and raw materials, consistent with the provisions of this Agreement.

#### Article ENER.5: Export and Import Monopolies

1. A Party shall not designate or maintain an import or export monopoly for energy goods or raw materials.

For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import or export energy goods or raw materials to the other Party.

2. This Article is without prejudice to the functions of transmission system operators including in relation to the operation of interconnectors.

3. This Article is without prejudice of Title VI Services and Investment] and the annexes thereto and does not include any right that results from the grant of an exclusive intellectual property right.

#### Article ENER.6: Export Pricing

A Party shall not impose a higher price for exports of energy goods or raw materials to the other Party than the price charged for those goods when destined for the domestic market, by means of any measures such as licenses or minimum price requirements.

#### Article ENER.7: Domestic Pricing and Public Service Obligations

1. If the Parties decide to regulate the price of the domestic supply to end consumers of energy goods and raw materials ("regulated price"), they may do so only by imposing a public service obligation.

A Party regulating the price shall ensure the publication of the methodology underlying the calculation of the regulated price referred to in the first subparagraph prior to its entry into force.

2. If a Party imposes a public service obligation, it shall ensure that the obligation:

- (a) is clearly defined, transparent, non-discriminatory, proportionate, specifies the categories of beneficiaries and is time limited;
- (b) shall not be maintained if the circumstances or objectives giving rise to its imposition no longer exist.

#### Article ENER.7a: Authorisation for Exploration and Production of Energy Goods and Raw Materials

1. If a Party requires an authorisation for exploration or production of hydrocarbons and electricity or raw materials, that Party shall grant such an authorisation in accordance with the general conditions and procedures set out in Articles [X] [Domestic Regulation].

2. The Party requiring the authorisation referred to in paragraph 1 shall publish, *inter alia*, the type of authorisation, the relevant area or part thereof, and any proposed date or time limit for granting the authorisation, in such a manner as to enable potentially interested applicants to submit applications.

Authorisations shall be granted on the basis of criteria, which are drawn up and published before the start of the period for submission of applications. Criteria shall be objective and non-discriminatory.

3. Notwithstanding paragraphs 1 and 2, each Party may grant authorisations related to hydrocarbons without complying with the conditions and procedures set out in Articles [X] [Domestic Regulation] if:

- (a) the area has been subject to a previous procedure complying with Articles [X] and [X] which has not resulted in an authorisation being granted;
- (b) the area is available on a permanent basis for the exploration for or production; or
- (c) the authorisation granted has been relinquished before its date of extinction.

4. Each Party may require an entity which has been granted an authorisation to pay a financial contribution or a contribution in kind. The contribution shall be fixed in such a manner so as not to interfere with the management and the decision-making process of the entity which has been granted an authorisation.

5. Each Party shall provide that the applicant has the right to appeal or request a review of the decision concerning the authorisation by an authority higher than or independent from the authority that issued the decision. Each Party shall ensure that the applicant is provided with the reasons for the administrative decision so as to enable the applicant to have recourse to procedures for appeal or review if necessary. The applicable rules for appeal or review shall be published.

#### Article ENER.8: Offshore Risk and Safety

1. Each party shall aim at high standards of safety and environmental protection for offshore oil and gas operations. These standards shall be in accordance with the commitments of the Parties pursuant to Article LPFSD 2.30

2. The Parties shall ensure that the authorities competent for safety and environmental protection relating to offshore oil and gas operations are independent from any functions relating to economic development and licensing of offshore oil and gas operations. Authorities in charge of safety and environmental protection on the one side and licensing on the other side shall be separate legal entities

3. The Parties shall ensure that all necessary measures are taken to prevent major accidents and limiting the consequences of such accidents in order to protect the marine environment and coastal communities against pollution. The measures shall empower competent authorities to ensure compliance. As a minimum, they shall include the duty for analysis and approval of major hazard reports, minimum requirements for operators and owners, independent verification, reporting and inspections.

4. Parties shall maintain this high level of safety and environmental protection for all existing and future platforms over their whole life-cycle, until the finalisation of their decommissioning, and adapt the corresponding measures where necessary to new operational offshore challenges.

#### Article ENER.9: Interference and Unauthorised Taking

1. Each Party shall take all necessary measures to prohibit the interruption, reduction or stoppage, or the unauthorised taking of energy goods transported through its territory. Measures targeted at the efficient management of the pipelines or the electricity grid, such as physical or virtual reverse flows are not covered by the scope of this provision.

2. Each Party shall take all necessary measures to:

- (a) minimise the risk of interruption, reduction, stoppage and unauthorised taking of energy goods transported through its territory; and
- (b) expeditiously restore the normal transport operation that has been interrupted, reduced or stopped.

3. In the event of a dispute settlement procedure pursuant to Title II of Part Five [Dispute Settlement] a Party shall not take any measure to interrupt, reduce or stop, or permit or require any undertaking to interrupt, reduce or stop, the transport of energy goods through its territory prior to the settlement of the dispute, unless this is specifically provided for in a contract or other agreement governing the transport of those goods or is explicitly provided for in the plans established in line with Articles ENER.22 or ENER.23 or in procedures implementing the provisions of Articles ENER.25 or ENER.26.

#### Article ENER.10: Safety and Integrity of Equipment and Infrastructure

This Chapter shall not be construed as preventing a Party from adopting temporary measures necessary to protect the safety and to preserve the integrity of energy equipment or infrastructure, subject to the requirement that those measures are not applied in a manner which would constitute a disguised restriction on trade or investment between the Parties.

#### *Section 2: Sustainable Energy*

#### Article ENER.11: Renewable and energy efficiency 2030 targets

1. The Union reaffirms the target for the share of gross final energy consumption from renewable energy sources in 2030 as set out in Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources.

The Union reaffirms its energy efficiency targets for 2030 as set out in the Directive (EU) 2012/27 on Energy Efficiency.

2. The United Kingdom shall establish:

- (a) targets for the share of energy from renewable sources in gross final energy consumption not lower than those in the National Energy and Climate Plan submitted by the United Kingdom to the Commission on [date of submission of final plan];
- (b) targets for the absolute level of primary and final energy consumption not higher than those in the National Energy and Climate Plan submitted by the United Kingdom to the Commission on [date of submission of final plan].

3. The Parties shall keep each other informed of progress towards meeting the targets set out in the first and second paragraph on a bi-annual basis, making clear the assumptions, parameters and methodologies used.

4. Energy from biofuels, bioliquids and biomass fuels shall be taken into account for the purposes of contributing to the targets for the share of gross final energy consumption from renewable energy sources referred to in paragraphs 1 and 2 of this Article or for eligibility for financial support only if they fulfil robust sustainability and greenhouse gas emissions saving criteria laid down by each Party. Each Party shall ensure effective third-party verification of compliance with those criteria.

5. Articles 2.30 and Article 2.31 of Title III of Part two [LPF] shall apply to the sustainability and green house gas emissions saving criteria referred to in the paragraph 4.

#### Article ENER.12: Integration of Renewable Energy

1. Each Party shall promote the use of energy from renewable sources.

2. Each Party shall ensure that rules concerning the authorisation, certification or licencing applicable to energy from renewable sources are necessary and proportionate.



3. Each Party shall clearly define any technical specifications which are to be met by renewable energy equipment and systems in order to benefit from support schemes.

Where European standards or other technical reference systems established by the European standardisation bodies exist, the technical specifications referred to in the first subparagraph shall be expressed in terms of those standards.

Each Party shall ensure that support for electricity from renewable sources provides incentives for the integration of the electricity from renewables sources in the electricity market in a market-based and market-responsive way

4. Where relevant, each Party shall assess the need to modify the gas network infrastructure to facilitate the integration of gas from renewable sources.

5. Each Party shall require gas transmission and distribution system operators to publish the connection tariffs to connect gas from renewable sources based on objective, transparent and non-discriminatory criteria.

6. Each Party shall ensure that electricity market rules enable the integration of electricity from renewable energy sources and shall remove barriers that could prevent access to the electricity network of electricity from renewable energy sources. In particular, and without prejudice to the commitments taken by Parties in Article ENER.7 (authorisation), Articles ENER.10, ENER.17 and ENER.18, each Party shall ensure that electricity transmission system operators and distribution system operators in its territory:

(a) accord renewable energy producers in their respective markets connection to and use of the electricity network for renewable electricity generation facilities located within its territory on reasonable terms and conditions, which are at least as favourable as the terms and conditions for producers of non-renewable energy; (b) provide for the effective participation of market participants offering energy from renewable sources when procuring products and services necessary for the efficient, reliable and secure operation of the transmission or distribution system;

(c) take appropriate grid-related and market-related operational measures in order to minimise the downward re-dispatching of electricity produced from renewable energy sources having regard to the need to maintain the stability of the electricity system.

#### Article ENER.13: Cooperation on Standards, Technical Regulations and Conformity Assessments

In accordance with Article TBT.5 (International Standards) and Article XX (Regulatory Cooperation) of *Chapter four of Title IV of Part two [Technical Barriers to Trade]*, the Parties shall promote cooperation between the regulators and standardisation bodies located within their respective territories in the area of energy efficiency and renewable energy, with a view to contributing to sustainable energy and climate policy and facilitating, *inter alia*:

(a) the convergence or, if possible, harmonisation of their respective standards on energy efficiency and sustainable renewable energy, based on mutual interest and reciprocity, and according to modalities to be agreed by the regulators and the standardisation bodies concerned;

(b) the development of standards on energy efficiency and renewable energy;

- (c) joint analyses, methodologies and approaches, to assist and facilitate the development of relevant tests and measurement standards, in cooperation with the respective relevant standardisation organisations; and
- (d) the promotion of standards on equipment for renewable energy generation and energy efficiency, including product design and labelling, if appropriate, through existing international cooperation initiatives.

#### Article ENER.14: Research, Development and Innovation

The Parties shall promote research, development and innovation in the areas of energy efficiency and renewable energy, and to this end the Parties shall, *inter alia*:

- (a) promote the dissemination of information and best-practices on environmentally sound and economically efficient energy policies, and cost-effective practices and technologies in the areas of energy efficiency and renewable energy, in a manner that is consistent with the adequate and effective protection of intellectual property rights;
- (b) promote research, development and application of energy-efficient and environmentally sound technologies, practices and processes in the areas of energy efficiency and renewable energy, which would minimise harmful environmental impacts in the entire energy chain; and
- (c) promote bilateral cooperation in pre-normative research in the area of renewable energy equipment and energy efficiency.

#### Section 3: Electricity and Gas

##### **Subsection 1: Competitive Electricity and Gas Markets**

#### Article ENER.15: Competitive markets and non-discrimination

1. Each Party shall ensure electricity and gas undertakings in its respective markets are subject to a regulatory framework which is non-discriminatory with regard to rules, fees and treatment with respect to

- (a) The right to supply customers;
- (b) Authorisation for the construction or operation of electricity generating capacity or gas facilities, including rules regarding market entry, operation and exit, without prejudice to Article ENER.7;
- (c) Balancing responsibility;
- (d) Access to wholesale markets;
- (e) Access to data without prejudice to the applicable rules of each Party on cross border transfers of data;
- (f) Switching process and billing regimes.

2. Each Party shall ensure that customers are free to purchase electricity or gas from the supplier of their choice within their respective retail markets in accordance with the applicable laws and regulations, and shall ensure that suppliers are free to determine the price at which they supply electricity or gas to customers, unless a public service obligation has been imposed in accordance with Article ENER.6.

3. This Article shall not apply to cross-border trade and shall be without prejudice to each Party's legitimate right to regulate in order to achieve certain public policy goals based on objective and non-discriminatory criteria.

#### Article ENER.16: Provisions relating to wholesale electricity and gas markets

1. Each Party shall ensure that wholesale electricity and gas rules prices reflect actual supply and demand. To this end each Party shall ensure that market rules:

- (a) encourage free price formation;
- (b) do not set any technical limits on pricing that restrict trade;
- (c) enable the efficient dispatch of electricity generation assets, energy storage and demand response;
- (d) enable the efficient use of the gas system.

2. Each Party shall ensure that balancing markets are organised in such a way as to:

- (a) ensure effective non-discrimination between participants and non-discriminatory access to participants;
- (b) ensure that services are defined in a transparent manner and procured in a transparent market based manner.

3. Each Party shall ensure that any capacity mechanism in electricity markets:

- (a) does not create undue market distortions or limit trade over interconnectors;
- (b) selects capacity providers by means of a transparent, non-discriminatory and competitive process;
- (c) does not go beyond what is necessary to address the identified adequacy concern.

#### Article ENER.20: Prohibition of market abuse on wholesale electricity and gas markets

1. Each Party shall prohibit market manipulation and insider trading on wholesale electricity and gas markets.

2. Each Party shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation.

#### ***Subsection 2: Non-Discriminatory Access to Networks***

#### Article ENER.17: Third-Party Access to Energy Transport Infrastructure and network charges

1. The Parties shall ensure the implementation of a system of third party access to their transmission and distribution networks based on published tariffs, applied objectively and without discrimination between entities in each Party's market.

2. Each Party shall ensure that transmission and distribution operators in its territory grant access to their transmission or distribution systems to undertakings in that Party's market within a reasonable period of time after the date of the request for access.

The transmission or distribution system operator may refuse access where it lacks the necessary capacity. Duly substantiated reasons shall be given for such refusal based on objective and technically and economically justified criteria.

3. Each Party shall ensure that charges applied to entities in that Party's market by transmission and distribution operators for access to, connection to or use of networks, and, where applicable, charges for related network reinforcements, are cost-reflective, transparent, and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator. Each Party shall publish the terms, conditions, tariffs and charges for the access to and use of energy transport infrastructure.

4. Each Party shall ensure the tariffs and charges referred to in paragraphs 1 and 3 are applied in a non-discriminatory manner with respect to entities in each Party's market.

#### Article ENER.18: System operation and unbundling of network operators

1. Each Party shall designate transmission and distribution system operators that shall operate, maintain and develop under economic conditions the electricity and gas transmission and distribution networks.

2. Each Party shall ensure transmission and distribution system operators carry out their functions in a transparent, non-discriminatory way.

3. Each Party shall implement a system of unbundling for electricity and gas transmission system operators which is effective in removing any conflict of interests between producers, suppliers and transmission system operators.

4. Each Party shall ensure a system of unbundling of electricity and gas distribution system operators with more than 100 000 connected customers that ensures the distribution system operator is independent at least in terms of legal form, organisation and decision making from other activities not relating to distribution.

#### Article ENER.19: Public policy objectives and third Party Access and ownership unbundling

1. Where necessary to fulfil a legitimate public policy objective and based on objective criteria, each Party may decide not to apply Article ENER.71 [Third-party access] and Article ENER.18(2),(3) and (4) [system operation] to the following:

- (a) emergent or isolated markets or systems;
- (b) new infrastructure which meets the conditions set out in ANNEX ENER-2.

2. Each Party shall ensure that exemptions granted to interconnections between the Union and the UK in accordance with Article 63 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity and Article 36 of the Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas continue to apply in accordance with their original terms.

#### Article ENER.20: Independent Regulatory Authority

1. Each Party shall designate regulatory authorities for electricity and gas which shall:

- (a) exercise their powers impartially and transparently;
- (b) be empowered to take autonomous decisions;

- (c) have all necessary human and financial resources.
2. The staff and management of the regulatory authority shall:
    - (a) act independently of any market interest;
    - (b) not seek or take instruction from government or any other public or private entity when carrying out the regulatory tasks, without prejudice to the right of governments to issue general policy guidelines.
  3. The regulatory authority shall have at least the following powers and duties:
    - (a) fixing or approving the tariffs, charges or conditions for access to networks referred to in Article ENER.17, or the methodologies underlying them;
    - (b) ensuring compliance with the system of unbundling referred to in Article ENER.18 and Article ENER.19;
    - (c) to issue binding decisions on electricity and gas undertakings at least in relation to points (a) and (b);
    - (d) to impose effective, proportionate and dissuasive penalties or to propose a court to impose such penalties.

### ***Subsection 3: Security of Supply***

#### Article ENER.21: Cooperation on Security of supply

1. The Parties shall cooperate to ensure security of supply of electricity and gas.
2. Each Party shall assess all risks affecting the security of supply of electricity or gas and shall exchange information on the relevant risks, including cross-border risks.
3. The Parties shall share the preventive action plans, and emergency plans referred to in Article ENER.22 and the risk preparedness plans referred to in Article ENER.23.
4. The parties shall inform each other without delay where there is reliable information that a disruption or crisis relating to the supply of electricity or gas may occur and on measures planned or taken.
5. The parties shall immediately inform each other in case of actual disruption or crisis in view of possible coordinated mitigation and restoration measures.

#### Article ENER.22: Gas preventive action plans and emergency plans

1. Each Party shall establish and regularly update preventive action plans and emergency plans to address risks identified risks affecting the security of supply of gas.
2. Preventive action plans shall contain the measures needed to remove or mitigate the risks identified as affecting the security of supply of gas. Gas emergency plans shall contain the measures to be taken to remove or mitigate the impact of a disruption of gas supply.
3. The measures contained in a preventive action plan and an emergency plan shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable, shall not unduly distort

competition or trade between the parties and shall not endanger the security of gas supply of the other Party.

4. For the Union, the plans referred to in paragraph 1 may be established and regularly updated at the level of Member States of the Union or at regional level.

#### Article ENER.23: Electricity risk preparedness

1. Each Party shall establish and regularly update risk preparedness plans to address risks affecting the security of supply of electricity.

2. For the Union the plans referred to in paragraph 1 may be established and regularly updated at the level of the Member States of the Union or at regional level.

3. Electricity risk preparedness plans shall set out the measures that are planned or taken to prevent, prepare for and mitigate electricity crisis, including possible non-market measures to be implemented in a crisis, specifying the triggers, conditions and procedures.

4. In an electricity crisis, each Party shall only activate non-market based measures as a last resort. Non-market based measures shall not unduly distort competition and trade between the parties and shall be necessary, proportionate and temporary.

5. The parties shall share best practices regarding short term and seasonal adequacy assessments.

#### ***Subsection 4: Infrastructure Planning and Offshore Energy***

##### Article ENER.24: Network development

1. The Parties shall cooperate to facilitate the timely development and interoperability of energy infrastructure connecting their territories.

2. Each Party shall ensure that ten-year network development plans for the electricity and gas transmission systems are drawn up, published and regularly updated.

3. The Parties shall cooperate in the development of offshore energy by sharing best practices and, where appropriate, by facilitating the development of specific projects.

#### ***Subsection 5: Efficient Use of Interconnections***

##### Article ENER.25: Efficient use of electricity interconnections between the parties

Each Party shall ensure that:

- (a) capacity allocation and congestion management on electricity interconnectors is market based;
- (b) the maximum capacity of interconnection capacity between the parties is made available taking account of:
  - i. the impact of physical power flows on the secure operation of the systems; and
  - ii. the most efficient use of the system.
- (c) there are no reserve prices for use of interconnection – this means no specific charges for use of interconnections when there is no congestion;

- (d) Capacity allocation and congestion management is coordinated between concerned Union transmission system operators and United Kingdom transmission system operators.

The coordination referred to in the first subparagraph shall not involve or imply participation by United Kingdom transmission system operators in Union procedures for capacity allocation and congestion management<sup>27</sup>.

The parties shall take the necessary steps with a view to ensure United Kingdom transmission system operators participate in the system of inter-transmission system operator compensation established by Commission Regulation (EU) No 838/2010 of 23 September 2010 on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

#### Article ENER.26: Efficient use of gas interconnections between the parties

1. Each Party shall ensure that:
  - (a) The maximum capacity of gas interconnections is made available;
  - (b) Auctions are generally used for the allocation of capacity at interconnection points.
2. Each Party shall take the necessary steps to ensure that:
  - (a) transmission system operators make available a common product covering both sides of every interconnection point;
  - (b) transmission system operators coordinate procedures relating to the use of interconnections between concerned Union transmission system operators and United Kingdom transmission system operators.

The coordination referred to in the first subparagraph shall not involve or imply participation by United Kingdom transmission system operators in Union procedures relating to the use of interconnections

#### *Section 4: Other Provisions*

#### Article ENER.27: Cooperation between Transmission System Operators

1. Each Party shall ensure that transmission system operators develop working arrangements that are efficient and inclusive in order to support planning and operational tasks associated with meeting the objectives of this Title, including the preparation of detailed technical procedures to effectively implement the provisions of Articles ENER.24 [network development], ENER.25 [efficient use of electricity] and ENER.26,[efficient use of gas interconnections] when requested to by the Partnership Council.

The working arrangements referred in the first subparagraph shall include a framework for cooperation between the European Network for Transmission System Operators for Electricity established in accordance with Regulation (EU) 2019/943, (hereafter ENTSO-E) and the European Network for Transmission System Operators for Gas established in accordance with Regulation (EC)

---

<sup>27</sup> See for the single allocation platform for forward interconnection capacity Regulation 2016/1719, for the European balancing platforms for the exchange of standard balancing products Regulation 2017/2195 and for the single day-ahead and intraday coupling of the EU electricity markets by Regulation 2015/1222.

2009/714 (hereafter ENTSOG) on the one hand and the transmission system operators for electricity and gas in the United Kingdom on the other.

The framework for cooperation mentioned in the second subparagraph shall not involve or imply membership of ENTSO-E or ENTSOG by United Kingdom transmission system operators.

2. The Partnership Council may recommend that each Party requests its transmission system operators to prepare the detailed technical procedures as referred to in the first subparagraph of paragraph 1.

3. Each Party shall ensure that their respective transmission system operators shall request the opinions of respectively the Agency for the Cooperation of Energy Regulators and the independent regulatory authority designated in accordance with Article ENER.20(1) [independent regulatory authority] in the United Kingdom on the detailed technical procedures. They shall submit these opinions with the draft technical procedures to the Partnership Council.

4. The Partnership Council shall review the draft technical procedures, and taking due account of the opinions of Agency for the Cooperation of Energy Regulators and the independent regulator in the United Kingdom, may recommend that the Parties implement such procedures in their respective domestic arrangements.

#### Article ENER.28: Cooperation between regulatory authorities

1. The Parties shall ensure that the Agency for the Cooperation of Energy Regulators and the independent United Kingdom regulatory authority designated in accordance with Article ENER.20(1) [independent regulatory authority] may develop contacts and enter into administrative arrangements in order to facilitate meeting the objectives of this Agreement.

2. The administrative arrangements referred to in the first subparagraph shall not involve or imply membership of the Agency for the Cooperation of Energy Regulators by the independent United Kingdom regulatory authority.

#### Article ENER.29: Dialogue

The Union and the United Kingdom shall establish a regular dialogue in order to facilitate meeting the objectives of this Title.

#### Article ENER.30: Amendments

The Partnership Council may amend the Annexes to this Title.

### *TITLE XIV: CIVIL NUCLEAR*

#### Article CIVNU.1: Objective

The objective of this Title is to provide a framework for co-operation between the Parties in the peaceful uses of nuclear energy on the basis of mutual benefit and reciprocity and without prejudice to the respective competences of each Party.



## Article CIVNU.2: Scope

1. Cooperation under this Title shall be carried out for peaceful purposes. Nuclear material, non-nuclear material, equipment, technology or nuclear material produced as a by-product transferred pursuant to this Title and special fissionable material used in or produced through the use of such items shall not be used for any nuclear explosive device, for research on or development of any nuclear explosive device or for any military purpose.
2. This Title shall apply to:
  - a) Nuclear material, non-nuclear material, equipment, or technology transferred between the Parties or their respective persons, whether directly or through a third country.

Such nuclear material, non-nuclear material, equipment, or technology shall become subject to this Title upon its entry into the territorial jurisdiction of the receiving Party, provided that the supplying Party has notified the receiving Party in writing of the transfer, and the receiving Party has confirmed in writing that such item is or will be held subject to this Title and that the proposed recipient, if other than the receiving Party, is an authorised person under the territorial jurisdiction of the receiving Party.

- b) All forms of nuclear material prepared by chemical or physical processes or isotopic separation provided that the quantity of nuclear material so prepared shall only be regarded as falling within the scope of this Title in the same proportion as the quantity of nuclear material used in its preparation, and which is subject to this Title, bears to the total quantity of nuclear material so used.
- c) All generations of nuclear material produced by neutron irradiation provided that the quantity of nuclear material so produced shall only be regarded as falling within the scope of the Title in the same proportion as the quantity of nuclear material which is subject to this Title and which, used in its production, contributes to this production.
- d) Nuclear material produced, processed or used in equipment where:
  - i) non-nuclear material subject to this Title was principally or wholly responsible for the production, processing or use of that nuclear material;
  - ii) equipment subject to this Title was wholly responsible for the production, processing or use of that nuclear material ;
  - iii) equipment has been designated by the supplying Party after consultation with the recipient Party as being designed, constructed, manufactured or operated on the basis of, or by the use of technology transferred subject to this Title; and
  - iv) equipment referred to in sub paragraphs ii) and iii) is restricted to items 1.1, 3, 4, 5, 6, 7 Annex B of INFCIRC/254/Rev.13/Part 1 and its further revised versions, and expressly excludes any sub-components of such equipment.

Nuclear material recovered for nuclear purposes from ores or concentrates, other than uranium ore concentrates, which are transferred between the Parties directly or through a third country, and which recovery has been notified by the transferring Party as being of relevance to the Title. If such

nuclear material cannot be subject to all of the conditions set out in Article CIVNU.7 [Safeguards], then such nuclear material shall not be used until the Parties have mutually determined the necessary safeguards and physical protection measures to apply.

3. Nuclear material, non-nuclear material, equipment, or technology referred to in paragraph 1 of this Article shall remain subject to the provisions of this Title until it has been determined, in accordance with the procedures set out in the administrative arrangements established pursuant to Article CIVNU.14 [Administrative Arrangements]:
  - a) that such item has been re-transferred beyond the jurisdiction of the receiving Party in accordance with the relevant provisions of this Title;
  - b) that nuclear material is no longer usable for any nuclear activity relevant from the point of view of safeguards referred to in paragraph 1 of Article CIVNU.7 [Safeguards] or has become practicably irrecoverable. For the purpose of determining when nuclear material subject to this Title is no longer usable or is no longer practicably recoverable for processing into a form in which it is usable for any nuclear activity relevant from the point of view of safeguards, both Parties shall accept a determination made by the IAEA in accordance with the provisions for the termination of safeguards of the relevant safeguards agreement to which the IAEA is a party;
  - c) that non-nuclear material and equipment are no longer usable for nuclear purposes; or
  - d) that the Parties mutually determine that it should no longer be subject to this Title.
4. Technology transfer: A prior notification between the Member State(s) concerned and the European Commission, on one side, and the United Kingdom, on the other, should be given before each transfer of nuclear technology.

#### Article CIVNU.3: Definitions

For the purpose of this Title, the following definitions apply:

- (a) "the Community" means the European Atomic Energy Community;
- (b) "by-product" means special fissionable material derived by one or more processes, whether successive or not, from nuclear material subject to this Title;
- (c) "competent authority" means:
  - (i) for the United Kingdom, the Office for Nuclear Regulation;
  - (ii) for the Community, the European Commission;

or such other authority as the Party concerned may at any time notify in writing to the other Party.

- (d) "equipment" means those items listed in Sections 1, 3, 4, 5, 6 and 7 of Annex B of IAEA INFCIRC/254/Rev.13/Part 1 and its further revised versions (Guidelines for Nuclear Transfers);

- (e) "intellectual property" shall have the meaning set out in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm on 14 July 1967, as amended on 28 September 1979, and may include other subject matter as mutually determined by the Parties;
- (f) "non-nuclear material" means:
  - (i) Deuterium and heavy water (deuterium oxide) and any other deuterium compound in which the ratio of deuterium to hydrogen exceeds 1:5000, for use in a nuclear reactor as defined in paragraph 1.1 of Annex B of IAEA INFCIRC/254/Rev.13/Part 1 and its further revised versions (Guidelines for Nuclear Transfers);
  - (ii) Nuclear-grade graphite: graphite, for use in a nuclear reactor as defined in paragraph 1.1 of Annex B of IAEA INFCIRC/254/Rev.13/Part 1 and its further revised versions (Guidelines for Nuclear Transfers), having a purity level better than 5 parts per million boron equivalent and with a density greater than 1.50 grams per cubic centimetre;
- (g) "nuclear material" means any source material or special fissionable material as those terms are defined in Article XX of the Statute of the IAEA done at the Headquarters of the United Nations on 23 October 1956, and which entered into force on 29 July 1957 (hereinafter referred to as the Statute of the IAEA). Any determination by the Board of Governors of the IAEA under Article XX of the Statute of the IAEA that amends the list of material considered to be "source material" or "special fissionable material", shall only have effect under this Title when the Parties have informed each other in writing that they accept that determination;
- (h) "peaceful purpose" means the use of nuclear material, including nuclear material produced as a by-product, non-nuclear material, equipment and technology in such fields as electric power generation, medicine, agriculture and industry, but does not include research on or development of any explosive devices, or any military purpose. Military purpose does not include provision of power for a military base drawn from any power network, or production of radioisotopes to be used for medical purposes in a military hospital;
- (i) "persons" means any natural person, undertaking or other entity governed by the applicable laws and regulations in the respective territorial jurisdiction of the Parties, but does not include the Parties to this Agreement;
- (j) "technology" has the meaning as defined in Annex A of IAEA INFCIRC/254/Rev.13/Part 1 and its further revised versions (Guidelines for Nuclear Transfers).

#### Article CIVNU.4: Forms of co-operation

1. The Parties may cooperate in the peaceful uses of nuclear energy in the following areas:
  - (a) trade and commercial cooperation relating to the nuclear fuel cycle;
  - (b) the supply of nuclear material, non-nuclear material, and equipment;

- (c) transfer of technology, including supply of information relevant to this Article;
  - (d) transfer of equipment which has been designated by the Parties as equipment designed, constructed or operated on the basis of or by the use of information obtained from the other Party and which is within the jurisdiction of one of the Parties at the time of designation;
  - (e) the procurement of equipment and devices;
  - (f) access to and use of equipment and facilities;
  - (g) safe management of spent fuel and radioactive waste;
  - (h) nuclear safety and radiation protection, including emergency preparedness and monitoring of levels of radioactivity in the environment;
  - (i) nuclear safeguards; use of radioisotopes and radiation in agriculture, industry and medicine;
  - (j) geological and geophysical exploration, development, production, further processing and use of uranium resources;
  - (k) regulatory aspects of the peaceful uses of nuclear energy;
  - (l) research and development;
  - (m) other areas relevant to the subject of this Title, insofar as they are covered by the Parties' respective programmes.
2. The co-operation referred to in paragraph 1 of this Article may be undertaken in the following forms:
- (a) organisation of symposia and seminars;
  - (b) organisation of joint projects and establishment of joint ventures;
  - (c) establishment of bilateral working groups for implementation of the joint projects and studies;
  - (d) supply of nuclear fuel cycle services including uranium conversion and isotopic enrichment;
  - (e) transfer of industrial equipment and industrial technology;
  - (f) facilitating exchange of skilled employees;
  - (g) exchange of information in areas of mutual interest, such as nuclear safeguards, nuclear safety, levels of radioactivity in the environment and supply of radioisotopes, and
  - (h) other forms of cooperation as may be determined by the Parties in writing.
3. The co-operation in specific areas outlined in paragraph 2 of this Article may be implemented as necessary through arrangements between a legal entity of the United Kingdom and a legal entity of the Community, which the respective competent authority notifies the other competent authority as being duly authorised to implement such co-

operation. Any such arrangements shall include provisions dealing with intellectual property rights protection where such rights exist or arise.

#### Article CIVNU.5: Enrichment

Prior to the enrichment of any nuclear material subject to this Title to twenty (20) percent or more in the isotope uranium 235, the written consent of both Parties shall be obtained. Such consent shall describe the conditions under which the uranium enriched to twenty (20) percent or more may be used. An arrangement to facilitate the implementation of this provision may be established by the Parties.

#### Article CIVNU.6: Trade in nuclear material, non-nuclear material, equipment or technology

1. Any transfer of nuclear material, non-nuclear material, equipment or technology carried out pursuant to the co-operation activities shall be made in accordance with the relevant international commitments of the Community, the Member States of the Community, and the United Kingdom in relation to peaceful uses of nuclear energy as listed in Article CIVNU.7 [Safeguards].
2. The Parties shall facilitate trade in nuclear materials between themselves or between persons or undertakings established in the respective territories of the Parties in the mutual interest of producers, the nuclear fuel cycle industry, utilities and consumers.
3. The Parties shall, to such extent as is practicable, assist each other in the procurement, by either Party or by persons within the Community or under the jurisdiction of the United Kingdom, of nuclear material, non-nuclear material, equipment or technology.
4. The continuation of the cooperation envisaged in the present Title shall be contingent upon the mutually satisfactory application of the system for safeguards and control established by the Community in accordance with the Euratom Treaty and of the system for safeguards and control of nuclear material, non-nuclear material, technology or equipment established by the Government of the United Kingdom.
5. The provisions of this Title shall not be used to jeopardise the integrity and smooth functioning of the Community's common nuclear market, in particular to impede the free movement of goods and services in it, or to frustrate the Community's nuclear common supply policy.
6. Transfers of nuclear material, non-nuclear material, equipment or technology and appropriate services shall be carried out under fair commercial conditions. The implementation of this paragraph shall be without prejudice to the Euratom Treaty and its derived legislation, and to laws and regulations of the United Kingdom.
7. [Any retransfers of any items or technology subject to this Title outside the jurisdiction of the Parties shall only be made in the framework of the commitments undertaken by individual Member States of the Community and the United Kingdom within the group of nuclear supplier countries known as the Nuclear Suppliers Group. In particular, the Guidelines for Nuclear Transfers, as set out in IAEA INFCIRC/254/Rev.13/Part 1, and its further revised versions shall apply to retransfers of any items subject to this Title.

8. Nuclear material subject to this Title shall not be transferred beyond the territorial jurisdiction of the receiving Party without the prior written consent of the supplier Party, except in accordance with paragraph 9 of this Article.
9. Upon entry into force of this Title, the Parties shall exchange lists of third countries to which retransfers by the other Party pursuant to paragraph 6 of this Article are authorised. Each Party shall notify the other Party of changes to its list of third countries.]

#### Article CIVNU.7: Safeguards

1. Nuclear materials subject to this Title shall be subject to the following conditions:
  - a) In the Community, to the Euratom safeguards pursuant to the Euratom Treaty and to the IAEA safeguards pursuant to the following safeguards agreements, as they may be revised and replaced, and in accordance with the Non-Proliferation Treaty:
    - i) the Agreement between the Community's non-nuclear weapon Member States, the European Atomic Energy Community and the International Atomic Energy Agency, done at Brussels on 5 April 1973 and which entered into force on 21 February 1977 (IAEA INFCIRC/193) the Agreement between France, the European Atomic Energy Community and the International Atomic Energy Agency, done in July 1978 and which entered into force on 12 September 1981 (IAEA INFCIRC/290);
    - ii) the Additional Protocols IAEA INFCIRC/193/Add.8, and IAEA INFCIRC/290/Add.1 signed in Vienna on 22 September 1998 and which entered into force on 30 April 2004 on the basis of the IAEA INFCIRC/540 (corrected) (Strengthened Safeguards System, Part II);
  - b) In the United Kingdom, in line with the relevant provisions of the Withdrawal Agreement:
    - i. to the national Safeguards system as implemented by the national competent authority; and
    - ii. to the IAEA safeguards pursuant to the Agreement between the United Kingdom and the International Atomic Energy Agency for the Application of Safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, which entered into force on xxxxxxx (IAEA INFCIRC/xxx); supplemented by a Protocol Additional to the Agreement between the United Kingdom and the International Atomic Energy Agency for the application of safeguards in connection with the Treaty on the Non- Proliferation of Nuclear Weapons, done in Vienna on xxxxxxxxxx and which entered into force on xxxxxxxxxx (IAEA INFCIRC/xxxxxx).
2. In the event of the application of any of the agreements with the IAEA referred to in paragraph 1 of this Article being suspended or terminated for any reason within the Community or the United Kingdom, the relevant Party shall enter into an agreement with

the IAEA which provides for effectiveness and coverage equivalent to that provided by the relevant safeguards agreements referred to in provisions a) or b) of paragraph 1 of this Article, or, if that is not possible,

- a) the Community, as far as it is concerned, shall apply safeguards based on the Euratom safeguards system, which provides for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provision a) of paragraph 1 of this Article and the United Kingdom, as far it is concerned, shall put in place and apply a national safeguards system which provides for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provision b) of paragraph 1 of this Article;
  - b) or, if that is not possible, the Parties shall enter into arrangements for the application of safeguards, which provide for effectiveness and coverage equivalent to that provided by the safeguards agreements referred to in provisions a) or b) of paragraph 1 of this Article.
3. Application of physical protection measures shall be at all times at levels which satisfy as a minimum the criteria set out in Annex C of IAEA INFCIRC/254/Rev.x/Part 1 (Guidelines for Nuclear Transfers and further revised versions thereof); supplementary to this document, the Member States of the Community, the European Commission, and the United Kingdom will refer when applying physical protection measures to their obligations under the Convention on the Physical Protection of Nuclear Material done on 3 March 1980, including any amendments that are in force for each Party and the recommendations in IAEA INFCIRC/225/Rev.5 corrected and further revised versions thereof (Physical Protection of Nuclear Material). Transport shall be subject to the provisions of the International Convention on the Physical Protection of Nuclear Material done on 3 March 1980, including any amendments that are in force for each Party, and to the IAEA Regulations for the Safe Transport of Radioactive Material (IAEA Safety Standards Series No. TS-R-1).

#### Article CIVNU.8: Reprocessing

The Parties grant their consent to the reprocessing of nuclear fuel containing nuclear material subject to this Title provided that such reprocessing takes place in accordance with the conditions set out in ANNEX CIVNU-A.

#### Article CIVNU.9: Co-operation on nuclear research and development

1. The Parties shall co-operate on research and development for peaceful and non-explosive, both power and non-power uses of nuclear energy between themselves and their agencies and, in respect of the Community, in so far as it is covered by its specific programmes. The Parties or their agencies, as appropriate, may allow the participation in such co-operation of researchers and organisations from all research sectors, including universities, laboratories and the private sector. The Parties shall also facilitate such co-operation between persons in this field.
2. The United Kingdom may participate in programmes in the area of EURATOM related research and training programmes, in accordance with Part Four of this Agreement [Union Programmes].

Specific terms and conditions regarding the United Kingdom's continued support for the Euratom participation to the ITER project via the United Kingdom's membership to Euratom's Joint Undertaking Fusion for Energy and the United Kingdom's participation as associated country in the EURATOM research and training programme, including the financial contribution, shall be determined in accordance with the provisions of Part Four of this Agreement [Union Programmes].

Article CIVNU.10: Nuclear safety, radiation protection, emergency preparedness and response and management of spent fuel and radioactive waste

1. The Community and the United Kingdom are Parties to the Convention on Nuclear Safety, done at Vienna on 17 June 1994 and which entered into force on 24 October 1996 (IAEA INFCIRC/449), the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, done at Vienna on 5 September 1997 and which entered into force on 18 June 2001 (IAEA INFCIRC/546), the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, done at Vienna on 26 September 1986 and which entered into force on 26 February 1987 (IAEA INFCIRC/336) and to the Convention on Early Notification of a Nuclear Accident, done at Vienna on 26 September 1986 and which entered into force on 27 October 1986 (IAEA INFCIRC/335) and the Convention on the Physical Protection of Nuclear Material done at Vienna on 3 March 1980 and to its Amendment (IAEA INFCIRC). The Parties commit to implement their obligations arising from these international conventions in a coherent manner in their internal legal order and to continue improving the implementation of the principles of such international conventions as well as to align, to the extent possible, their position in this regard in the relevant international fora.
2. A Party shall not adopt or maintain any measure that weakens or reduces the level of protection provided for by the Party's law and practices, including in terms of their enforcement, below the level provided by the common standards applicable within the Community and the United Kingdom at the end of the transition period in relation to nuclear safety, radiation protection, safe management of radioactive waste and spent fuel, decommissioning, safe shipment of nuclear materials and emergency preparedness and response.
3. The Parties shall continue to cooperate in the framework of established information exchange mechanisms such as the European Community Urgent Radiological Information Exchange, European Commission Radioactive Discharges Database or European Radiological Data Exchange Platform.
4. The Parties shall continue to cooperate, maintain regular contacts and share information on matters relevant to nuclear safety, radiation protection, emergency preparedness and response and management of spent fuel and radioactive waste, including the results of international peer reviews.

Article CIVNU.11: Intellectual Property

The Parties shall ensure the adequate and effective protection of intellectual property created and technology transferred pursuant to the co-operation under this Title in accordance with the relevant international agreements and arrangements, and the laws and regulations in force in the United Kingdom and in the Union, the Community or their Member States.



#### Article CIVNU.12: Exchange of information

1. The Parties may make available to each other and to persons within the Community or under the jurisdiction of the United Kingdom, information at their disposal on matters within the scope of this Title.

Information received from any third party under terms which prevent the further supply of such information shall be excluded from the scope of this Title.

Information regarded by the supplying Party as being of commercial value shall be supplied only under terms and conditions specified by the supplying Party.

2. The Parties shall encourage and facilitate the exchange of information between persons under the jurisdiction of the United Kingdom, on the one hand and persons within the Community on the other hand on matters within the scope of this Title.

Information owned by such persons shall be supplied only with the consent of and under terms and conditions to be specified by those persons.

3. The Parties shall take all appropriate precautions to preserve the confidentiality of information received as a result of the operation of this Title.

#### Article CIVNU.13: Implementation of the Title

1. The provisions of this Title shall be implemented in good faith in such a manner as to avoid hampering, delay or undue interference in the nuclear activities in the United Kingdom and in the Community and so as to be consistent with the prudent management practices required for the economic and safe conduct of nuclear activities.
2. The provisions of this Title shall not be used for the purpose of seeking commercial or industrial advantages, nor of interfering with the commercial or industrial interests, whether domestic or international, of either Party or authorised persons, nor of interfering with the nuclear policy of either Party or of the Member States of the Community, nor of hindering the promotion of

the peaceful and non-explosive uses of nuclear energy, nor of hindering the movement of items subject to or notified to be made subject to this Title either within the respective territorial jurisdiction of the Parties or between the Government of the United Kingdom and the Community.

3. The accounting of nuclear material and non-nuclear material subject to this Title will be based on the fungibility and the principles of proportionality and equivalence of nuclear materials and non-nuclear material as set out in the administrative arrangements established pursuant to Article CIVNU.14 [Administrative Arrangements].

#### Article CIVNU.14: Administrative Arrangements

1. The competent authorities of both Parties shall establish administrative arrangements to ensure the effective implementation of the provisions of this Title.
2. An administrative arrangement established pursuant to paragraph 1 of this Article may be amended in writing by the competent authorities.

#### Article CIVNU.15: Compliance

Each Party shall be responsible toward the other for ensuring that the provisions of this Title are accepted and complied with as to the United Kingdom, by all of its governmental enterprises and by all persons under its jurisdiction to whom authorisation has been granted pursuant to this Title, and as to the Community, by all persons within the Community to whom authorisation has been granted pursuant to this Title.

#### Article CIVNU.16: Obligations following suspension or termination

In case of suspension of this Title or termination of this Agreement, the supplier Party shall have the right to require the return of nuclear material, non-nuclear material, equipment and technology subject to this Agreement.

#### Article CIVNU.17: Existing agreements

The provisions of any bilateral nuclear co-operation agreements in force between the United Kingdom and Member States of the Community shall be regarded as complementary to this Title and shall, where appropriate, be superseded by the provisions of this Title.

#### Article CIVNU.18: Amendments

The Partnership Council may amend the Annexes to this Title.

### *TITLE XV: SMALL AND MEDIUM-SIZED ENTERPRISES*

#### Article SME.1: Objective

The objective of this Title is to enhance the ability of small and medium-sized enterprises to benefit from Part two [Economy and trade].

#### Article SME.2: Information sharing

1. Each Party shall establish a publicly accessible website for small and medium-sized enterprises with information regarding Part two [Economy and trade], including:
  - (a) a summary of Part two [Economy and trade];
  - (b) a description of the provisions in Part two [Economy and trade] that each Party considers to be relevant to small and medium-sized enterprises of both Parties; and
  - (c) any additional information that each Party considers would be useful for small and medium-sized enterprises interested in benefitting from Part two [Economy and trade].
2. Each Party shall include an internet link in the website provided for in paragraph 1 to the:
  - (a) text of Part two [Economy and trade];
  - (b) equivalent website of the other Party; and
  - (c) websites of its own authorities that the Party considers would provide useful information to persons interested in trading and doing business in its territory.

3. Each Party shall include an internet link in the website provided for in paragraph 1 to websites of its own authorities with information related to the following:

- (a) customs laws and regulations, procedures for importation, exportation and transit as well as relevant forms, documents and other information required;
- (b) laws, regulations and procedures concerning intellectual property rights, including geographical indications;
- (c) technical laws and regulations including, where necessary, obligatory conformity assessment procedures and links to lists of conformity assessment bodies, in cases where third party conformity assessment is obligatory, as provided for in Chapter four [Technical Barriers to Trade] of Title IV [Trade in goods];
- (d) laws and regulations on sanitary and phytosanitary measures relating to importation and exportation as provided for in Chapter three [Sanitary and phytosanitary issues] of Title IV [Trade in goods];
- (e) laws and regulations on public procurement, single point of access on the internet to public procurement notices as provided for in Title X [Public Procurement] and other relevant provisions contained in that title;
- (f) company registration procedures; and
- (g) other information which the Party considers may be of assistance to small and medium-sized enterprises.

4. Each Party shall include an internet link in the website provided for in paragraph 1 to a database that is electronically searchable by tariff nomenclature code and that includes the following information with respect to access to its market:

- (a) in respect of tariff measures and tariff-related information:
  - (i) rates of customs duties and quotas, including most-favoured nation, rates concerning non most-favoured nation countries and preferential rates and tariff rate quotas;
  - (ii) excise duties;
  - (iii) taxes (value added tax/ sales tax);
  - (iv) customs or other fees, including other product specific fees;
  - (v) rules of origin as provided for in Chapter two of Title IV [Rules of Origin];
  - (vi) duty drawback, deferral, or other types of relief that reduce, refund, or waive customs duties;
  - (vii) criteria used to determine the customs value of the good; and
  - (viii) other tariff measures;
- (b) in respect of tariff nomenclature related non-tariff measures:
  - (i) information needed for import procedures; and

(ii) information related to non-tariff measures.

5. Each Party shall regularly, or if requested by the other Party, update the information and links referred to in paragraphs 1 to 4 that it maintains on its website to ensure such information and links are up-to-date and accurate.

6. Each Party shall ensure that the information and links referred to in paragraphs 1 to 4 is presented in an adequate manner to use for small and medium-sized enterprises.

7. No fee shall apply for access to the information provided pursuant to paragraphs 1 to 4 for any person of either Party.

#### Article SME.3: Small and medium-sized enterprises contact points

1. Upon the entry into force of the Agreement, each Party shall designate a contact point to carry out the functions listed in this Article and notify the other Party of its contact details. The Parties shall promptly notify each other of any change of those contact details.

2. The small and medium-sized enterprises contact points of the Parties shall:

(a) seek to ensure that the needs of small and medium-sized enterprises are taken into account in the implementation of Part two [Economy and Trade] and that small and medium-sized enterprises of both Parties can take advantage of Part two [Economy and Trade];

(b) ensure that the information referred to in Article SME.2 is up-to-date, accurate and relevant for small and medium-sized enterprises. Either Party may, through the small and medium-sized enterprises contact point, suggest additional information that the other Party may include in its websites to be maintained in accordance with Article SME.2;

(c) examine any matter relevant to small and medium-sized enterprises in connection with the implementation of Part two [Economy and trade], including:

(i) exchanging information to assist the Partnership Council in its task to monitor and implement the small and medium-sized enterprises-related aspects of Part two [Economy and Trade];

(ii) assisting specialised committees, joint working groups and contact points established by this Agreement in considering matters of relevance to small and medium-sized enterprises;

(d) report periodically on their activities, jointly or individually, to the Partnership Council for its consideration; and

(e) consider any other matter arising under this Agreement pertaining to small and medium-sized enterprises as the Parties may agree.

3. The small and medium-sized enterprises contact points of the Parties shall carry out their work through the communication channels decided by the Parties, which may include electronic mail, videoconferencing or other means. They may also meet, as appropriate.

4. Small and medium-sized enterprises contact points may seek to cooperate with experts and external organisations, as appropriate, in carrying out their activities.

Article SME.4: Relation with Part Five

Title II of Part Five [Dispute settlement] does not apply to this Title.

DRAFT

## TITLE XVI: EXCEPTIONS

### Article EXC.1: General exceptions

1. Nothing in Chapter one [National Treatment and market access for goods] and Chapter five of Title IV of Part two [Customs and trade facilitation], Title XIII of Part two [Energy and raw materials], Section 3 of Chapter two of Title III of Part two [State-owned enterprises], Title VII of Part two [Digital trade] and Chapter two of Title VI of Part two [Investment liberalisation], Chapter three of Title VI of Part two [Cross-border trade in services], shall be construed as preventing a Party from adopting or maintaining measures compatible with Article XX of the GATT 1994. To that end, Article XX of the GATT 1994, including its Notes and Supplementary Provisions, is incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment liberalization or trade in services, nothing in Title XIII of Part two [Energy and raw materials], Section 3 of Chapter two of Title III of Part two [State-owned enterprises], Title VII of Part two [Digital trade] and Chapter two of Title VI of Part two [Investment liberalisation], Chapter three of Title VI of Part two [Cross-border trade in services] shall be construed to prevent the adoption or enforcement by either Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order<sup>28</sup>;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - (iii) safety.

3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with the provisions of the aforementioned Chapters/Sections/Titles:

- (a) the measures referred to in point (b) of Article XX of GATT 1994 and in point (b) of paragraph 2 of this Article include environmental measures, which are necessary to protect human, animal or plant life and health;
- (b) point (g) of Article XX of GATT 1994 applies to measures relating to the conservation of living and non-living exhaustible natural resources; and
- (c) measures taken to implement multilateral environmental agreements can fall under points (b) or (g) of Article XX of GATT 1994 or under point (b) of paragraph 2 of this Article.

---

<sup>28</sup> The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

4. Before a Party takes any measures provided for in points (i) and (j) of Article XX of GATT 1994, that Party shall provide the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. If no agreement is reached within 30 days of providing the information, the Party may apply the relevant measures. Where exceptional and critical circumstances requiring immediate action that makes prior information or examination impossible, the Party intending to take the measures may apply forthwith precautionary measures necessary to deal with the situation. That Party shall inform the other Party immediately thereof.

#### Article EXC.2: Taxation

1. Nothing in this Agreement shall affect the rights and obligations of either the Union or its Member States and the United Kingdom, under any tax convention. In the event of any inconsistency between this Agreement and any such tax convention, the tax convention shall prevail to the extent of the inconsistency.

2. Article 2.4 of Chapter two of Title VI of Part two [Investment Liberalisation] and Article 3.4 of Chapter three of Title VI of Part two [Cross-border trade in services] shall not apply to an advantage accorded by a Party pursuant to a tax convention.

3. Subject to the requirement that tax measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade and investment, nothing in this Agreement shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure aimed at ensuring the equitable or effective imposition or collection of direct taxes that:

- (a) distinguishes between taxpayers, who are not in the same situation, in particular with regard to their place of residence or with regard to the place where their capital is invested; or
- (b) aims at preventing the avoidance or evasion of taxes pursuant to the provisions of any tax convention or domestic fiscal legislation.

4. For the purpose of this Article:

- (a) "residence" means residence for tax purposes;
- (b) "tax convention " means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation that the Union or any of its Member States and the United Kingdom are party to.

#### Article EXC.3: WTO Waivers

If an obligation in Part Two of this Agreement is substantially equivalent to an obligation contained in the WTO Agreement, any measure taken in conformity with a waiver adopted pursuant to Article IX of the WTO Agreement is deemed to be in conformity with the substantively equivalent provision in this Agreement.

*TITLE XVII: OTHER PROVISIONS*

Article OTH.1: Definitions

Unless otherwise specified, for the purposes of Part Two of the Agreement:

- (a) "Agricultural good" means a product listed in Annex 1 to the Agreement on Agriculture;
- (b) "Customs duty" means any duty or charge of any kind imposed on or in connection with the importation of a good, not including any:
  - (i) charge equivalent to an internal tax imposed in accordance with Article X.4 [National Treatment on Internal Taxation and Regulation] of the Trade in Goods Chapter;
  - (ii) anti-dumping, special safeguard, countervailing or safeguard duty applied in conformity with the GATT 1994, the Anti-dumping Agreement, the Agreement on Agriculture, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards, as appropriate; and
  - (iii) fee or other charge imposed on or in connection with importation that is limited in amount to the approximate cost of the services rendered;
- (c) "CPC" means the Provisional Central Product Classification (Statistical Papers Series M No.77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);
- (d) "Days" means calendar days, including weekends and holidays;
- (e) "Existing" means in effect on the date of entry into force of this Agreement;
- (f) "Good of a Party" means a domestic good as that is understood in the GATT 1994, and includes originating goods of that Party;
- (g) "Harmonized System" or "HS" means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes;
- (h) "Heading" means the first four digits in the tariff classification number under the Harmonized System;
- (i) "Legal person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (j) "Measure" includes any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, requirement or practice;<sup>29</sup>
- (k) "Measures of a Party" means any measures adopted or maintained by:<sup>30</sup>
  - (i) central, regional or local governments or authorities; and

---

<sup>29</sup> For greater certainty, the term "measure" includes failures to act.

<sup>30</sup> For greater certainty, "measures of a Party" covers measures by entities listed in sub-paragraphs (i) and (ii), which are adopted or maintained by instructing, directing or controlling, either directly or indirectly, the conduct of other entities with regard to those measures.



- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (l) "Person" means a natural person or a legal person;
- (m) "Sanitary or phytosanitary measure" means any measure referred to in paragraph 1 of Annex A to the SPS Agreement;
- (n) "Third country" means a country or territory outside the territorial scope of application of this Agreement;
- (o) "Vienna Convention on the Law of Treaties" means the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969; and
- (p) "WTO" means the World Trade Organization.

#### Article OTH.2: WTO Agreements

For the purposes of this Agreement, the WTO Agreements are referred to as follows:

- (a) "Agreement on Agriculture" means the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement;
- (b) "Anti-dumping Agreement" means the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994;
- (c) "GATS" means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;
- (d) "GATT 1994" means the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;
- (e) "Safeguards Agreement" means the Agreement on Safeguards, contained in Annex 1A to the WTO Agreement;
- (f) "SCM Agreement" means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the WTO Agreement;
- (g) "SPS Agreement" means the Agreement on the Application of Sanitary and Phytosanitary Measures, contained in Annex 1A to the WTO Agreement;
- (h) "TBT Agreement" means the Agreement on Technical Barriers to Trade, contained in Annex 1 to the WTO Agreement;
- (i) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C to the WTO Agreement; and
- (j) "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

#### Article OTH.3: Establishment of a free trade area

The Parties hereby establish a free trade area, in conformity with Article XXIV of GATT 1994 and Article V of GATS.

#### Article OTH.4: Relation to the WTO Agreement

1. The Parties affirm their rights and obligations with respect to each other under the WTO Agreement and other agreements to which they are party.
2. Nothing in this Agreement shall be construed as requiring either Party to act in a manner inconsistent with its obligations under the WTO Agreement.

#### Article OTH.5: Fulfilment of obligations

Each Party shall adopt any general or specific measures required to fulfil their obligations under this Part, including those required to ensure its observance by central, regional or local governments and authorities, as well as non-governmental bodies in the exercise of powers delegated to them.

#### Article OTH.6: Rules of interpretation

[Placeholder]

#### Article OTH.7: References to laws and other Agreements

1. Unless otherwise specified, where reference is made in [Placeholder: Titles XX of Part Two] to laws and regulations of a Party, those laws and regulations shall be understood to include amendments thereto.
2. Unless otherwise specified, where international agreements are referred to or incorporated into Part Two of this Agreement, in whole or in part, they shall be understood to include amendments thereto or their successor agreements entering into force for both Parties on or after the date of signature of this Agreement. If any matter arises regarding the implementation or application of the provisions of this Part as a result of such amendments or successor agreements, the Parties may, on request of either Party, consult with each other with a view to finding a mutually satisfactory solution to this matter as necessary.

#### Article OTH.8: Tasks of the Partnership Council

The Partnership Council may:

- (a) adopt decisions to amend the Agreement in the following cases:
  - (i) Rules of Origin *[to be specified]*;
  - (ii) Annex XXX (Public Procurement);
  - (iii) Annex XXX (Protected Geographical Indications);
  - (iv) any other provision, protocol, appendix or annex, for which the possibility of such decision is explicitly foreseen in Part Two of this Agreement.
- (b) adopt decisions to issue interpretations of the provisions of Part Two of this Agreement which shall be binding on all the bodies set-up under this Agreement, including the arbitration tribunal referred to in Title II of Part Five [Dispute settlement].

#### Article OTH.9: Territorial scope

The provisions of this Agreement concerning the tariff treatment of goods, including rules of origin and the temporary suspension of this treatment, this Agreement shall also apply, with respect to the

Union, to those areas of the customs territory of the Union, as defined by Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, which are not covered by Article FINPROV.1(a) [Territorial scope] of Part Five.

DRAFT

## PART THREE: SECURITY PARTNERSHIP

### TITLE I: LAW ENFORCEMENT AND JUDICIAL COOPERATION IN CRIMINAL MATTERS

#### Chapter one: General Provisions

##### Article LAW.GEN.1: Objective

1. The objective of this Title is to provide for law enforcement and judicial cooperation between, on the one hand, the Member States, Union institutions, bodies, offices and agencies and, on the other hand, the United Kingdom in relation to the prevention, investigation, detection and prosecution of criminal offences and to the prevention of and fight against money laundering and terrorist financing.
2. This Title shall only apply to law enforcement and judicial cooperation in criminal matters taking place exclusively between the Parties, and does not regulate situations arising within the Union, which remain defined by Union law.

##### Article LAW.GEN.2: Definitions

For the purposes of this Title, the following definitions apply:

- (a) "State" means a Member State or the United Kingdom;
- (b) "third State" means any State other than a State as defined in paragraph (a);
- (c) "personal data" means any information relating to a data subject;
- (d) "data subject" means an identified or identifiable natural person; an identifiable person being a person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data or an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (e) "special categories of personal data" means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation;
- (f) "genetic data" means all personal data relating to the genetic characteristics of an individual that have been inherited or acquired, which give unique information about the physiology or the health of that individual, resulting in particular from an analysis of a biological sample from the individual in question;
- (g) "biometric data" means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
- (h) "processing" means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use,

disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

- (i) “personal data breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

#### Article LAW.GEN.3: Protection of human rights and fundamental freedoms

Nothing in this Title shall have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in the European Convention on Human Rights, or, in case of the Union and its Member States, in the Charter of Fundamental Rights.

#### Article LAW.GEN.4: Protection of personal data

1. Without prejudice to paragraph 2, any transfer of personal data to the United Kingdom under this Title, with the exception of any transfer of personal data under Chapter ten [AML], may only take place where the European Commission has decided in accordance with Article 36 of Directive (EU) 2016/680 that the United Kingdom or one or more relevant specified sectors within the United Kingdom ensures an adequate level of protection.

2. Transfers of Passenger Name Record under Chapter three [PNR] as well as any transfer of personal data under Chapter ten [AML] may only take place where the European Commission has decided in accordance with Article 45 of the General Data Protection Regulation (EU) 2016/679 that the United Kingdom or one or more relevant specified sectors within the United Kingdom ensures an adequate level of protection.

3. The United Kingdom shall ensure that the domestic independent authority responsible for data protection has the power to supervise compliance with and enforcement of the data protection safeguards under this Title. The United Kingdom shall by [XXXX] notify the Union of the supervisory authority or authorities responsible for overseeing the implementation of, and ensuring compliance with, this Title.

#### Chapter two: Exchanges of DNA, Fingerprints and vehicle registration data (“PRUM”)

##### Article LAW.PRUM.5: Objective

The objective of this Chapter is to establish reciprocal cooperation between the competent law enforcement authorities of the United Kingdom, on the one hand, and the Member States, on the other hand, on the automated transfer of DNA profiles, dactyloscopic data and certain domestic vehicle registration data.

##### Article LAW.PRUM.6: Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) “competent law enforcement authority” means a domestic police, customs or other authority that is authorised by domestic law to detect, prevent and investigate offences or criminal activities and to exercise authority and take coercive measures in the context of such activities. Agencies, bodies or other units dealing especially with national security issues are not considered competent law enforcement authority for the purpose of this Chapter.

- (b) "search" and "comparison", as referred to in Articles LAW.PRUM.8 [Automated searching of DNA profiles], LAW.PRUM.9 [Automated comparison of DNA profiles], LAW.PRUM.12 [Automated searching of dactyloscopic data], mean the procedures by which it is established whether there is a match between, respectively, DNA data or dactyloscopic data which have been communicated by one State and DNA data or dactyloscopic data stored in the databases of one, several, or all of the other States;
- (c) "automated searching", as referred to in Article LAW.PRUM.15 [Automated searching of vehicle registration data], means an online access procedure for consulting the databases of one, several, or all of the other States;
- (d) "DNA profile" means a letter or number code which represents a set of identification characteristics of the non-coding part of an analysed human DNA sample, i.e. the particular molecular structure at the various DNA locations (loci);
- (e) "non-coding part of DNA" means chromosome regions not genetically expressed, i.e. not known to provide for any functional properties of an organism;
- (f) "DNA reference data" mean DNA profile and reference number;
- (g) "reference DNA profile" means the DNA profile of an identified person;
- (h) "unidentified DNA profile" means the DNA profile obtained from traces collected during the investigation of criminal offences and belonging to a person not yet identified;
- (i) "note" means a State's marking on a DNA profile in its domestic database indicating that there has already been a match for that DNA profile on another State's search or comparison;
- (j) "dactyloscopic data" mean fingerprint images, images of fingerprint latents, palm prints, palm print latents and templates of such images (coded minutiae), when they are stored and dealt with in an automated database;
- (k) "dactyloscopic reference data" mean dactyloscopic data and reference number;
- (l) "vehicle registration data" mean the data-set as specified in Chapter 3 of the ANNEX LAW-1 to this Agreement;
- (m) "individual case", as referred to in Article LAW.PRUM.8(1) [Automated searching of DNA profiles], second sentence, Article LAW.PRUM.12 [Automated searching of dactyloscopic data], second sentence and Article LAW.PRUM.15(1) [Automated searching of vehicle registration data], means a single investigation or prosecution file. If such a file contains more than one DNA profile, or one piece of dactyloscopic data or vehicle registration data, they may be transmitted together as one request;
- (n) "laboratory activity" means any measure taken in a laboratory when locating and recovering traces on items, as well as developing, analysing and interpreting forensic evidence regarding DNA profiles and dactyloscopic data, with a view to providing expert opinions or exchanging forensic evidence;
- (o) "results of laboratory activities" means any analytical outputs and directly associated interpretation;

- (p) "forensic service provider" means any organisation, public or private, that carries out forensic laboratory activities at the request of competent law enforcement or judicial authorities;
- (q) 'national accreditation body' means the sole body in a Member State that performs accreditation with authority derived from the State as referred to in Regulation (EC) No 765/2008.

#### Article LAW.PRUM.7: Establishment of national DNA analysis files

1. The States shall open and keep national DNA analysis files for the investigation of criminal offences.
2. For the purpose of implementing this Chapter, the States shall ensure the availability of DNA reference data from their national DNA analysis files as referred to in paragraph 1. DNA reference data shall only include DNA profiles established from the non-coding part of DNA and a reference number. DNA reference data shall not contain any data from which the data subject can be directly identified. DNA reference data relating to unidentified DNA profiles shall be recognisable as such.
3. The States shall inform the Special Committee on Law enforcement and judicial cooperation of the national DNA analysis files to which Article LAW.PRUM.7 [Establishment of national DNA analysis files] to Article LAW.PRUM.10 [Collection of cellular material and supply of DNA profiles] and 13 [national contact points], 14 [Supply of further personal data and other information] and 16 [Implementing measures] apply and the conditions for automated searching as referred to in Article LAW.PRUM.8(1) [Automated searching of DNA profiles].

#### Article LAW.PRUM.8: Automated searching of DNA profiles

1. For the investigation of criminal offences, States shall allow other States' national contact points as referred to in Article LAW.PRUM.13 [national contact points], access to the DNA reference data in their DNA analysis files, with the power to conduct automated searches by comparing DNA profiles. Searches may be conducted only in individual cases and in compliance with the requesting State's national law.
2. Should an automated search show that a DNA profile supplied matches DNA profiles entered in the requested State's searched file, the national contact point of the requesting State shall receive in an automated way the DNA reference data with which a match has been found. If no match can be found, automated notification of this shall be given.

#### Article LAW.PRUM.9: Automated comparison of DNA profiles

1. For the investigation of criminal offences, the States shall, in line with mutually accepted practical arrangements between the States concerned, via their national contact points, compare the DNA profiles of their unidentified DNA profiles with all DNA profiles from other national DNA analysis files' reference data. DNA profiles shall be supplied and compared in automated form. Unidentified DNA profiles shall be supplied for comparison only where provided for under the requesting State's national law.
2. Should a State, as a result of the comparison referred to in paragraph 1, find that any DNA profiles supplied by another State match any of those in its DNA analysis files, it shall, without delay, supply that other State's national contact point with the DNA reference data with which a match has been found.

#### Article LAW.PRUM.10: Collection of cellular material and supply of DNA profiles

Where, in ongoing investigations or criminal proceedings, there is no DNA profile available for a particular individual present within a requested State's territory, the requested State shall provide legal assistance by collecting and examining cellular material from that individual and by supplying the DNA profile obtained to the requesting State, if:

- (a) the requesting State specifies the purpose for which this is required;
- (b) the requesting State produces an investigation warrant or statement issued by the competent authority, as required under that State's domestic law, showing that the requirements for collecting and examining cellular material would be fulfilled if the individual concerned were present within the requesting State's territory; and
- (c) under the requested State's law, the requirements for collecting and examining cellular material and for supplying the DNA profile obtained are fulfilled.

#### Article LAW.PRUM.11: Dactyloscopic data

For the purpose of implementing this Chapter, the States shall ensure the availability of dactyloscopic reference data from the file for the national automated fingerprint identification systems established for the prevention and investigation of criminal offences. Dactyloscopic reference data shall only include dactyloscopic data and a reference number. Dactyloscopic reference data shall not contain any data from which the data subject can be directly identified. Dactyloscopic reference data which is not attributed to any individual (unidentified dactyloscopic data) must be recognisable as such.

#### Article LAW.PRUM.12: Automated searching of dactyloscopic data

1. For the prevention and investigation of criminal offences, States shall allow other States' national contact points, as referred to in Article LAW.PRUM.13 [national contact points], access to the reference data in the automated fingerprint identification systems which they have established for that purpose, with the power to conduct automated searches by comparing dactyloscopic data. Searches may be conducted only in individual cases and in compliance with the requesting State's national law.
2. The confirmation of a match of dactyloscopic data with reference data held by the requested State shall be carried out by the national contact point of the requesting State by means of the automated supply of the reference data required for a clear match.

#### Article LAW.PRUM.13: National contact points

1. For the purposes of the supply of data as referred to in Article LAW.PRUM.8 [Automated searching of DNA profiles], Article LAW.PRUM.9 [Automated comparison of DNA profiles] and Article LAW.PRUM.12 [Automated searching of dactyloscopic data], the States shall designate national contact points.
2. In respect of the Member States, national contact points designated for an according exchange of data within the Union shall be considered as national contact points for the purpose of this Chapter.
3. The powers of the national contact points shall be governed by the applicable national law.



#### Article LAW.PRUM.14: Supply of further personal data and other information

Should the procedure referred to in Article LAW.PRUM.8 [Automated searching of DNA profiles], Article LAW.PRUM.9 [Automated comparison of DNA profiles] and Article LAW.PRUM.12 [Automated searching of dactyloscopic data] show a match between DNA profiles or dactyloscopic data, the supply of further available personal data and other information relating to the reference data shall be governed by the national law, including the legal assistance rules, of the requested State.

#### Article LAW.PRUM.15: Automated searching of vehicle registration data

1. For the prevention and investigation of criminal offences and in dealing with other offences coming within the jurisdiction of the courts or the public prosecution service in the requesting State, as well as in maintaining public security, States shall allow other States' national contact points, as referred to in paragraph 2, access to the following national vehicle registration data, with the power to conduct automated searches in individual cases:

- (a) data relating to owners or operators; and
- (b) data relating to vehicles.

Searches may be conducted only with a full chassis number or a full registration number and in compliance with the requesting State's national law.

2. For the purposes of the supply of data as referred to in paragraph 1, the United Kingdom shall designate a national contact point for incoming requests from Member States. The powers of the national contact points shall be governed by the applicable national law.

#### Article LAW.PRUM.15a: Accreditation of forensic service providers carrying out laboratory activities

1. The United Kingdom shall ensure that their forensic service providers carrying out laboratory activities are accredited by a national accreditation body as complying with EN ISO/IEC 17025.

2. Each State shall ensure that the results of accredited forensic service providers carrying out laboratory activities in other States are recognised by its authorities responsible for the prevention, detection, and investigation of criminal offences as being equally reliable as the results of domestic forensic service providers carrying out laboratory activities accredited to EN ISO/IEC 17025.

3. The competent authorities of the United Kingdom shall not carry out searches and automated comparison according to Article LAW.PRUM.8 [Automated searching of DNA profiles], Article LAW.PRUM.9 [Automated comparison of DNA profiles] and LAW.PRUM.12 [Automated searching of dactyloscopic data] before the United Kingdom has transposed and applied the measures referred to in paragraph 1.

4. Paragraphs 1 and 2 do not affect national rules on the judicial assessment of evidence.

5. The United Kingdom shall communicate to the Specialised Committee on Law Enforcement and Judicial Cooperation the text of the main provisions adopted to implement and apply the provisions of this Article.

#### Article LAW.PRUM.16: Implementing measures

1. States shall make all categories of data available for searching and comparison to national competent authorities equally to the competent authorities of other States for the purposes covered in this Chapter.

2. For the purpose of implementing the procedures referred to in Article LAW.PRUM.8 [Automated searching of DNA profiles], Article LAW.PRUM.9 [Automated comparison of DNA profiles], Article LAW.PRUM.12 [Automated searching of dactyloscopic data] and Article LAW.PRUM.15 [Automated searching of vehicle registration data], technical and procedural specifications are laid down in the in ANNEX LAW-1.

3. The declarations made by Member States in accordance with Council Decisions 2008/615/JHA and 2008/616/JHA shall also apply in their relations with the United Kingdom.

Article LAW.PRUM.17: Ex ante evaluation

1. In order to verify whether the United Kingdom has fulfilled the conditions as set out in ANNEX LAW-1, an evaluation visit and a pilot run shall be carried out in respect of and under conditions and arrangements acceptable to the United Kingdom.

2. On the basis of an overall evaluation report and following the same steps as for the launching of automated data exchanges in Member States the Union shall determine the date or dates as from which personal data may be supplied by Member States to the United Kingdom pursuant to this Chapter.

DRAFT

### Chapter three: Transfer and processing of passenger name record data (PNR)

#### Article LAW.PNR.18: Scope

1. This Chapter lays down rules under which passenger name records (PNR) data may be transferred to, processed and used by the United Kingdom Competent Authorities for flights between the Union and the United Kingdom, and sets forth the specific safeguards in this regard.
2. This Chapter shall apply to air carriers operating passenger flights between the Union and the United Kingdom.
3. This Chapter shall also apply to carriers incorporating or storing data in the Union and operating passenger flights to or from the United Kingdom.

#### Article LAW.PNR.19: Definitions

For the purposes of this Chapter, the following definitions shall apply:

- (a) "air carrier" means an air transport undertaking with a valid operating licence or equivalent permitting it to carry out carriage of passengers by air between the United Kingdom and the Union;
- (b) "Passenger Name Record" ("PNR") means a record of each passenger's travel requirements which contains information necessary to enable reservations to be processed and controlled by the booking and participating air carriers for each journey booked by or on behalf of any person, whether it is contained in reservation systems, departure control systems used to check passengers onto flights, or equivalent systems providing the same functionalities. Specifically, as used in this Chapter, PNR data consists of the elements set out in the ANNEX LAW-2;
- (c) "Passenger Information Units" – the Units established or designated by Member States that are responsible for receiving and processing PNR data;
- (d) "The United Kingdom Competent Authority" means the United Kingdom authority responsible for receiving and processing PNR data under this Agreement;

#### Article LAW.PNR.20 Purposes of the use of PNR data

1. The United Kingdom shall ensure that PNR data received pursuant to this Chapter is processed strictly for the purpose of preventing, detecting, investigating or prosecuting terrorist offences or serious crime and oversee the processing of PNR data within the terms set out in this Agreement.
2. For the purposes of this Chapter, a "terrorist offence" is an intentional act referred to in Articles 3 to 14 of EU Directive 2017/541/EU of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.
3. Serious crime means the offences listed in ANNEX LAW-3 that are punishable by a custodial sentence or a detention order for a maximum period of at least three years under domestic law.
4. In exceptional cases, the United Kingdom Competent Authority may process PNR data where necessary to protect the vital interests of any individual, such as:

- (a) a risk of death or serious injury; or
- (b) a significant public health risk, in particular as required by internationally recognised standards.

5. The United Kingdom Competent Authority may also process PNR data on a case-by-case basis where the disclosure of relevant PNR data is compelled by a United Kingdom court or administrative tribunal in a proceeding directly related to a purpose under paragraph 1.

Article LAW.PNR.21: Ensuring PNR data is provided

1. The Union shall ensure that air carriers transfer PNR data to the United Kingdom Competent Authority pursuant to this Chapter.
2. The United Kingdom shall not require an air carrier to provide elements of PNR data which are not already collected or held by the air carrier for reservation purposes.
3. The United Kingdom shall delete upon receipt any data transferred to it by an air carrier, pursuant to this Chapter, if that data element is not listed in ANNEX LAW-2.

Article LAW.PNR.22: Police and judicial cooperation

1. The United Kingdom shall share with Europol, Eurojust, within the scope of their respective mandates, or the police or a judicial authority of a Member State, as soon as possible, all relevant and appropriate analytical information containing PNR data obtained under this Chapter.
2. The United Kingdom shall share, at the request of Europol, Eurojust, within the scope of their respective mandates, or the police or a judicial authority of a Member State, PNR data, the results of processing those data, or analytical information containing PNR data obtained under this Chapter, in specific cases to prevent, detect, investigate, or prosecute within the Union a terrorist offence or serious crime.
3. The United Kingdom shall ensure that this information is shared in accordance with agreements and arrangements on law enforcement or information sharing between the United Kingdom and Europol, Eurojust, or that Member State, in particular exchange of information with Europol under this Article shall take place through the secure communication line for the purpose of exchange of information through Europol.

Article LAW.PNR.23: Non-Discrimination

The United Kingdom shall ensure that the safeguards applicable to the processing of PNR data apply to all passengers on an equal basis without distinctions that are not objectively justified.

Article LAW.PNR.24: Use of special categories of personal data

Any processing of special categories of personal data shall be prohibited under this Chapter. To the extent that the PNR data which is transferred to the United Kingdom Authority includes special categories of personal data, the United Kingdom Competent Authority shall delete such data immediately.

Article LAW.PNR.25: Data security and integrity

1. The United Kingdom shall implement regulatory, procedural or technical measures to protect PNR data against accidental, unlawful or unauthorized access, processing or loss.

2. The United Kingdom shall ensure compliance verification and the protection, security, confidentiality, and integrity of the data. The United Kingdom shall:

- (a) apply encryption, authorization, and documentation procedures to the PNR data;
- (b) limit access to PNR data to authorized officials;
- (c) hold PNR data in a secure physical environment that is protected with access controls; and
- (d) establish a mechanism that ensures that PNR data queries are conducted in a manner consistent with Article LAW.PNR.20 [Purposes of the use of PNR data].

3. If an individual's PNR data is accessed or disclosed without authorisation, the United Kingdom shall take measures to notify that individual, to mitigate the risk of harm, and to take remedial action.

4. The United Kingdom shall ensure that the United Kingdom Competent Authority promptly informs the Specialised Committee on Law Enforcement and Judicial Cooperation of any significant incidents of accidental, unlawful or unauthorised access, processing or loss of PNR data.

5. The United Kingdom shall ensure that any breach of data security, in particular leading to accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, or any unlawful forms of processing will be subject to effective and dissuasive corrective measures which might include sanctions.

#### Article LAW.PNR.26: Transparency and notification to passengers

1. The United Kingdom shall ensure that the United Kingdom Competent Authority makes the following available on its website:

- (a) a list of the legislation authorizing the collection of PNR data;
- (b) the purpose(s) for the collection of PNR data;
- (c) the manner of protecting the PNR data;
- (d) the manner and extent to which the PNR data may be disclosed;
- (e) information regarding the rights to access, correction, notation and redress; and
- (f) contact information for inquiries.

2. The Parties shall work with interested parties, such as the aviation and air travel industry, to promote transparency, at the time of booking, on the purpose of the collection, processing and use of PNR data, and on how to request access, correction and redress. Air carriers shall provide passengers with clear and meaningful information in relation to the transfer of PNR data under this Chapter, including the recipient authority, the purpose of the transfer and the right to request from the recipient authority access to and rectification of the personal data of the passenger that has been transferred.

3. Where PNR data retained in accordance with Article LAW.PNR.28 [Retention of PNR data] has been used subject to the conditions set out in Article LAW.PNR.29 [Conditions for the use of PNR]

or has been disclosed in accordance with Article LAW.PNR.31 [Disclosure within the United Kingdom] or Article LAW.PNR.32 [Disclosure outside the United Kingdom], the United Kingdom shall notify the passengers concerned in writing, individually and within a reasonable time once such notification is no longer liable to jeopardise the investigations by the government authorities concerned to the extent the relevant contact information of the passengers is available or can be retrieved taking into account reasonable efforts. The notification shall include information on how the individual concerned can seek administrative or judicial redress.

#### Article LAW.PNR.27: Automated processing of PNR data

1. The United Kingdom shall ensure that any automated processing of PNR data is based on non-discriminatory, specific and reliable pre-established models and criteria to enable the United Kingdom Competent Authority to:
  - (a) arrive at results targeting individuals who might be under a reasonable suspicion of involvement or participation in terrorist offences or serious crime as defined in paragraphs 2 and 3 of Article LAW.PNR.20 [Purposes of the use of PNR data]; or
  - (b) in exceptional circumstances, protect the vital interests of any individual as set out in paragraph 4 of Article LAW.PNR.20 [Purposes of the use of PNR data].
2. The United Kingdom shall ensure that the databases against which PNR data is compared are reliable, up to date and limited to those used by the United Kingdom in relation to the purposes of this Chapter set out in Article LAW.PNR.20 [Purposes of the use of PNR data].
3. The United Kingdom shall not take any decisions significantly adversely affecting a passenger solely on the basis of automated processing of PNR data.

#### Article LAW.PNR.28: Retention of PNR data

1. The United Kingdom shall not retain PNR data for more than five years from the date that it receives the PNR data.
2. Upon expiry of a period of six months after the transfer of the PNR data referred to in paragraph 1, all PNR data shall be depersonalised through masking out the following data elements which could serve to identify directly the passenger to whom the PNR data relate:
  - (a) name(s), including the names of other passengers on the PNR and number of travellers on the PNR travelling together;
  - (b) address and contact information;
  - (c) all forms of payment information, including billing address, to the extent that it contains any information which could serve to identify directly the passenger to whom the PNR relate or any other persons;
  - (d) frequent flyer information;
  - (e) general remarks to the extent that they contain any information which could serve to identify directly the passenger to whom the PNR relate; and
  - (f) any API data that have been collected.

3. Notwithstanding paragraph 1, the United Kingdom shall delete the PNR data of passengers after their departure from the country unless a risk assessment indicates the need to keep such PNR data. In order to establish this need, the United Kingdom shall identify objective evidence from which it may be inferred that certain passengers present the existence of a risk in terms of the fight against terrorism and serious crime.
4. For the purpose of paragraph 2, unless information is available on the exact date of departure, the date of departure should be considered as the last day of the period of maximum lawful stay in the United Kingdom of the passenger concerned.
5. The use of the data retained under this article is subject to the conditions laid down in Article LAW.PNR.29 [Conditions for the use of PNR].
6. An independent administrative body in the United Kingdom shall assess on a yearly basis the need to retain PNR data pursuant to paragraph 2.
7. Notwithstanding paragraphs 1, 2 and 3, the United Kingdom may retain PNR data, required for any specific action, review, investigation, enforcement action, judicial proceeding, prosecution, or enforcement of penalties, until concluded.
8. The United Kingdom shall destroy the PNR data at the end of the PNR data retention period.

Article LAW.PNR.29: Conditions for the use of PNR

The United Kingdom Competent Authority may use PNR data retained in accordance with Article LAW.PNR.28 [Retention of PNR data] for purposes other than security and border control checks, including any disclosure under Article LAW.PNR.31 [Disclosure within the United Kingdom] and Article LAW.PNR.32 [Disclosure outside the United Kingdom], only where new circumstances based on objective grounds indicate that the PNR data of one or more passengers might make an effective contribution to the attainment of the purposes of this Chapter as described in Article LAW.PNR.20 [Purposes of the use of PNR data]. Such use shall be subject to prior review by a court or by an independent administrative body in the United Kingdom based on a reasoned request by the United Kingdom Competent Authority within the domestic legal framework of procedures for the prevention, detection or prosecution of crime, except:

- (a) in cases of validly established urgency; or,
- (b) for the purpose of verifying the reliability and currency of the pre-established models and criteria on which the automated processing of PNR data is based, or of defining new models and criteria for such processing.

Article LAW.PNR.30: Logging and documenting of PNR data processing

The United Kingdom Competent Authority shall log and document all processing of PNR data. The United Kingdom shall only use a log or document to:

- (a) self-monitor and to verify the lawfulness of data processing;
- (b) ensure proper data integrity;
- (c) ensure the security of data processing; and
- (d) ensure oversight.

#### Article LAW.PNR.31: Disclosure within the United Kingdom

1. The United Kingdom Competent Authority shall not disclose PNR data to other government authorities in the United Kingdom unless the following conditions are met:
  - (a) the PNR data is disclosed to government authorities whose functions are directly related to the purposes set out in Article LAW.PNR.20 [Purposes of the use of PNR data];
  - (b) the PNR data is disclosed only on a case-by-case basis;
  - (c) under the particular circumstances the disclosure is necessary for the purposes set out in Article LAW.PNR.20 [Purposes of the use of PNR data];
  - (d) only the minimum amount of PNR data necessary is disclosed;
  - (e) the receiving government authority affords protection equivalent to the safeguards described in this Chapter; and
  - (f) the receiving government authority does not disclose the PNR data to another entity unless the disclosure is authorised by the United Kingdom Competent Authority respecting the conditions laid down in this paragraph.
2. When transferring analytical information containing PNR data obtained under this Chapter, the safeguards applying to PNR data in this Article shall be respected.

#### Article LAW.PNR.32: Disclosure outside the United Kingdom

1. The United Kingdom shall ensure that the United Kingdom Competent Authority does not disclose PNR data to government authorities in third States unless all the following conditions are met:
  - (a) the PNR data is disclosed to government authorities whose functions are directly related to the purposes set out in Article LAW.PNR.20 [Purposes of the use of PNR data];
  - (b) the PNR data is disclosed only on a case-by-case basis;
  - (c) the PNR data is disclosed only if necessary for the purposes set out in Article LAW.PNR.20 [Purposes of the use of PNR data];
  - (d) only the minimum PNR data necessary is disclosed;
  - (e) the third State to which the data is disclosed has either concluded an agreement with the Union that provides for the protection of personal data comparable to this Agreement or is subject to a decision of the European Commission pursuant to Union law, finding that the third State ensures an adequate level of data protection within the meaning of Union law.
2. If, in accordance with paragraph 1, the United Kingdom Competent Authority discloses PNR data collected under this Chapter originating in a Member State, the United Kingdom Competent Authority shall notify the authorities of that Member State of the disclosure at the earliest appropriate opportunity. The United Kingdom shall issue this notification in accordance with agreements and arrangements on law enforcement or information sharing between the United Kingdom and that Member State.



3. When transferring analytical information containing PNR data obtained under this Chapter, the safeguards applying to PNR data in this Article shall be respected.

#### Article LAW.PNR.33: Method of transfer

Air carriers shall transfer PNR data to the United Kingdom Competent Authority exclusively on the basis of the 'push method', a method whereby air carriers transfer PNR data into the database of the United Kingdom Competent Authority, and in accordance with the following procedures to be observed by air carriers, by which they:

- (a) transfer PNR data by electronic means in compliance with the technical requirements of the United Kingdom Competent Authority or, in case of technical failure, by any other appropriate means ensuring an appropriate level of data security;
- (b) transfer PNR data using a mutually accepted messaging format;
- (c) transfer PNR data in a secure manner using common protocols required by the United Kingdom Competent Authority.

#### Article LAW.PNR.34: Frequency of transfer

1. The United Kingdom Competent Authority shall require air carriers to transfer the PNR data:

- (a) on a scheduled basis, 24 to 48 hours before the scheduled flight departure time; and
- (b) immediately after flight closure, that is, once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for passengers to board or leave.

2. The United Kingdom Competent Authority shall permit air carriers to limit the transfer referred to in point (b) of paragraph 1 to updates of the transfers referred to in point (a) of that paragraph.

3. The United Kingdom Competent Authority shall inform air carriers of the specified times for the transfers.

4. In specific cases where there is an indication that additional access is necessary to respond to a specific threat related to the purposes set out in Article LAW.PNR.20 [Purposes of the use of PNR data], the United Kingdom Competent Authority may require an air carrier to provide PNR data prior to, between or after the scheduled transfers. In exercising this discretion, the United Kingdom Competent Authority shall act judiciously and proportionately and use the method of transfer described in Article LAW.PNR.33 [Method of transfer].

#### Article LAW.PNR.35: Cooperation

The United Kingdom Competent Authority and the respective authorities of the Member States shall cooperate to pursue the coherence of their PNR data processing regimes in a manner that further enhances the security of citizens of the United Kingdom, the Union and elsewhere.

#### Article LAW.PNR.36: Non-derogation

This Chapter shall not be construed to derogate from any obligation between the United Kingdom and Member States or third States to make or respond to a request under a mutual assistance instrument.

Article LAW.PNR.37: Consultation, review and amendments

1. The Parties shall advise each other of any measure that is to be enacted and that may affect this Chapter.
2. When carrying out joint reviews of this Chapter as referred in Article LAW.OTHER.135 [Review and evaluation] (1)(b), the Parties shall pay particular attention to the necessity and proportionality of processing and retaining PNR data for each of the purposes set out in Article LAW.PNR.20 [Purposes of the use of PNR data]. The joint reviews shall also include the examination of how the United Kingdom Competent Authority has ensured that the pre-established models, criteria and databases referred to in Article LAW.PNR.27 [Automated processing of PNR data] are reliable, relevant and current, taking into account statistical data.
3. A Party proposing an amendment to this Chapter shall do so in writing through the Specialised Committee on Law Enforcement and Judicial Cooperation.

DRAFT

## Chapter four: Cooperation on operational information

### Article LAW.OPIN.38: Objective

1. The objective of this Chapter is to ensure that the competent law enforcement authorities of the United Kingdom on the one hand and of the Member States on the other hand may, pursuant to the provisions of this Chapter, exchange existing information and intelligence for the purpose of conducting criminal investigations or criminal intelligence operations in the context of the detection, prevention or investigation of criminal offences as listed in ANNEX LAW-3 to this Agreement according to the following provisions, to the extent that the transfer of this information and intelligence is not covered by other Chapters of this Agreement.

2. No data processed in databases established on the basis of Union law shall be provided to the United Kingdom in response to a request under this Chapter.

### Article LAW.OPIN.39: Definitions

For the purpose of this Chapter, the following definitions apply:

(a) “competent law enforcement authority” means a domestic police, customs or other authority that is authorised by domestic law to detect, prevent and investigate offences or criminal activities and to exercise authority and take coercive measures in the context of such activities. Agencies, bodies or other units dealing especially with national security issues are not considered competent law enforcement authority for the purpose of this Chapter.

In respect of the Member States, law enforcement authorities declared in accordance with Article 2(a) of Framework Decision 2006/960/JHA are considered as competent law enforcement authorities for the purpose of this Chapter. The Specialised Committee on Law Enforcement and Judicial Cooperation shall be notified of eventual modifications to the aforementioned declarations.

The United Kingdom shall by [XXXXX] notify the Specialised Committee on Law Enforcement and Judicial Cooperation of the authorities considered as competent law enforcement authority for the purpose of this Chapter.

(b) “criminal investigation”: a procedural stage within which measures are taken by competent law enforcement or judicial authorities, including public prosecutors, with a view to establishing and identifying facts, suspects and circumstances regarding one or several identified concrete criminal acts;

(c) “criminal intelligence operation”: a procedural stage, not yet having reached the stage of a criminal investigation, within which a competent law enforcement authority is entitled by domestic law to collect, process and analyse information about crime or criminal activities with a view to establishing whether concrete criminal acts have been committed or may be committed in the future;

(d) “information and/or intelligence”:

(i) any type of information or data which is held by law enforcement authorities;

(ii) any type of information or data which is held by public authorities or by private entities and which is available to law enforcement authorities without the taking of coercive measures, in accordance with Article LAW.OPIN.40(5) [Provision of information and intelligence].

#### Article LAW.OPIN.40: Provision of information and intelligence

1. States shall ensure that information and intelligence will be provided at the request of a competent law enforcement authority of another State pursuant to the provisions of this Chapter, acting in accordance with the powers conferred upon it by domestic law, conducting a criminal investigation or a criminal intelligence operation.
2. No conditions stricter than those applicable at domestic level for providing and requesting information and intelligence shall be applied by States for providing information and intelligence to competent law enforcement authorities pursuant to this Chapter. In particular, States shall not subject the exchange of information or intelligence which in an internal procedure may be accessed by the requested competent law enforcement authority without a judicial agreement or authorisation, to such an agreement or authorisation.
3. Where the information or intelligence sought may, under the domestic law applicable to the requested competent law enforcement authority, be accessed by the requested competent law enforcement authority only pursuant to an agreement or authorisation of a judicial authority, the requested competent law enforcement authority shall be obliged to ask the competent domestic judicial authority for an agreement or authorisation to access and exchange the information sought.
4. Where the information or intelligence sought has been obtained from another State or from a third State and is subject to the rule of speciality, its transmission to the competent law enforcement authority pursuant to this Chapter may only take place with the consent of the State or third State that provided the information or intelligence.
5. This Chapter does not impose any obligation on States to gather and store information and intelligence for the purpose of providing it to competent law enforcement authorities of another State, or to obtain any information or intelligence by means of coercive measures, defined in accordance with domestic law, in the State receiving the request for information or intelligence.
6. This Chapter does not impose any obligation on States to provide information and intelligence to be used as evidence before a judicial authority nor does it give any right to use such information or intelligence for that purpose. Where a State has obtained information or intelligence in accordance with this Chapter, and wishes to use it as evidence before a judicial authority, it shall obtain prior consent of the State that provided the information or intelligence through the use of Mutual Assistance as provided in Chapter eight.
8. States shall, where permitted by and in accordance with their domestic law, provide information or intelligence previously obtained by means of coercive measures.

#### Article LAW.OPIN.41: Requests for information and intelligence

1. Information and intelligence may be requested, and may subsequently only be processed, for the purposes set out in Article LAW.OPIN.38 [Objective].

A request for information and intelligence can be sent where there are factual reasons to believe that relevant information and intelligence is available to a competent law enforcement authority of the Member States or the United Kingdom. The request shall set out those factual reasons and explain the purpose for which the information and intelligence is sought and the connection between the purpose and the person who is the subject of the information and intelligence.

2. The requesting competent law enforcement authority shall not request more information or intelligence or setting narrower time frames than necessary for the purpose of the request.

3. Requests for information or intelligence shall contain at least the information set out in ANNEX LAW-4.

Article LAW.OPIN.42: Time limits for provision of information and intelligence

1. States shall have procedures in place so that they can respond within at most eight hours to urgent requests for information and intelligence regarding offences referred to in ANNEX LAW-3, when the requested information or intelligence is held in a domestic database directly accessible by a competent law enforcement authority.

2. If the requested competent law enforcement authority is unable to respond within eight hours, it shall provide reasons for that on the form set out in ANNEX LAW-4. Where the provision of the information or intelligence requested within the period of eight hours would put a disproportionate burden on the requested law enforcement authority, it may postpone the provision of the information or intelligence. In that case the requested law enforcement authority shall immediately inform the requesting law enforcement authority of this postponement and shall provide the requested information or intelligence as soon as possible, but not later than within three days.

3. Parties shall ensure that for non-urgent cases, requests for information and intelligence regarding offences referred to in ANNEX LAW-3 should be responded to within one week if the requested information or intelligence is held in a database directly accessible by a law enforcement authority. If the requested competent law enforcement authority is unable to respond within one week, it shall provide reasons for that on the form set out in ANNEX LAW-4.

4. In all other cases, Parties shall ensure that the information sought is communicated to the requesting competent law enforcement authority within 14 days. If the requested competent law enforcement authority is unable to respond within 14 days, it shall provide reasons for that on the form set out in ANNEX LAW-4.

Article LAW.OPIN.43: Spontaneous exchange of information and intelligence

1. Without prejudice to Article LAW.OPIN.44 [Reasons to withhold information or intelligence], the competent law enforcement authorities may, without any prior request being necessary, provide each other information and intelligence in cases where there are factual reasons to believe that the information and intelligence could assist in the detection, prevention or investigation of offences referred to ANNEX LAW-3. The modalities of such spontaneous exchange shall be regulated by the domestic law of State providing the information or intelligence.

2. The provision of information and intelligence shall be limited to what is deemed relevant and necessary for the successful detection, prevention or investigation of the crime or criminal activity in question by the providing competent law enforcement authority.

Article LAW.OPIN.44: Reasons to withhold information or intelligence

1. [Without prejudice to Article LAW.OPIN.40 (2) [Provision of information and intelligence], a competent law enforcement authority may refuse to provide information or intelligence only if there are factual reasons to assume that the provision of the information or intelligence would:

(a) harm essential national security interests of the requested State;

(b) jeopardise the success of a current investigation or a criminal intelligence operation or the safety of individuals;

(c) clearly be disproportionate or irrelevant with regard to the purposes for which it has been requested; or

(d) result in the prosecution in a State of a person who has been finally judged by another State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State.

2. Where the request pertains to an offence punishable by a term of imprisonment of a maximum of one year or less under the law of the requested competent law enforcement authority, that authority may refuse to provide the requested information or intelligence.

3. The competent law enforcement authority shall refuse to provide information or intelligence if the competent judicial authority has not authorised the access and exchange of the information or intelligence requested pursuant to Article LAW.OPIN.40 (3) [Provision of information and intelligence].

#### Article LAW.OPIN.45: Communication channels and language

1. Exchange of information and intelligence according to this Chapter may take place via the secure communication line for the purpose of exchange of information through Europol or any other any existing channels for international law enforcement cooperation. The language used for the request and the exchange of information of intelligence shall be the one applicable for the channel used.

2. When making the declarations or notifications in accordance with Article LAW.OPIN.39 [Definitions], Member States or the United Kingdom shall also provide details of the contacts to which requests may be sent in cases of urgency. These details may be modified at any time. The Specialised Committee on Law Enforcement and Judicial Cooperation shall communicate to the Member States, the United Kingdom and the European Commission the declarations received.

#### Chapter five: Cooperation with Europol

##### Article LAW.EUROPOL.46: Objective

The objective of this Chapter is to establish cooperative relations between Europol and the competent authorities of the United Kingdom in order to support and strengthen the action by the Member States and the United Kingdom as well as their mutual cooperation in preventing and combating serious crime, terrorism and forms of crime which affect a common interest covered by a Union policy.

##### Article LAW.EUROPOL.47: Definitions

For the purpose of this Chapter, the following definitions apply:

- (a) "Europol" means the European Union Agency for Law Enforcement Cooperation, set up under Regulation (EU) 2016/794 (the "Europol Regulation");
- (b) "Competent authority" means, for the Union, Europol and Europol national units, and, for the United Kingdom a domestic law enforcement authority responsible under domestic law for preventing and combatting criminal offences;

The United Kingdom shall by [XXXXX] notify the Specialised Committee on Law Enforcement and Judicial Cooperation of the authorities considered as competent law enforcement authority for the purpose of this Chapter and provide a short description of their competences.

#### Article LAW.EUROPOL.48: Forms of crime

1. The cooperation as established under this Chapter shall relate to the forms of crime within Europol's competence, as listed in ANNEX LAW. EUROPOL-6, including related criminal offences.
2. Related criminal offences shall be the criminal offences committed in order to procure the means of committing the forms of crime referred to in paragraph 1 of this Article, criminal offences committed in order to facilitate or carry out such acts, and criminal offences committed to ensure the impunity of such acts.
3. Where the list of forms of crime for which Europol is competent under Union law is changed, the Specialised Committee on Law enforcement and judicial cooperation may, from the date when the change to Europol's competence enters into force, upon a proposal from the Union, amend ANNEX LAW.EUROPOL-6 accordingly.

#### Article LAW.EUROPOL.49: Scope of cooperation

The cooperation may, in addition to the exchange of personal data under the conditions laid down in this Chapter and in accordance with the tasks of Europol as outlined in the Europol Regulation, in particular include the exchange of information such as specialist knowledge, general situation reports, results of strategic analysis, information on criminal investigation procedures, information on crime prevention methods, the participation in training activities, the provision of advice and support in individual criminal investigations as well as operational cooperation.

#### Article LAW.EUROPOL.50: Domestic contact point and liaison officers

1. The United Kingdom shall designate a domestic contact point to act as the central point of contact between Europol and competent authorities of the United Kingdom and notify the Specialised Committee on Law Enforcement and Judicial Cooperation about this.
2. For the purpose of facilitating the cooperation as laid down in this Chapter, the United Kingdom shall second a liaison officer to Europol. Europol may second a liaison officer to the United Kingdom.
3. The United Kingdom shall ensure that its liaison officer has speedy and, where technically possible, direct access to the relevant domestic databases of the United Kingdom that necessary for them to fulfil their tasks.
4. The details of liaison officers' tasks referred to in paragraph 2, their rights and obligations and the costs involved, shall be governed by administrative arrangements concluded between Europol and the competent authorities of the United Kingdom as referred to in Article LAW.EUROJUST.74 [Channels of transmission].

#### Article LAW.EUROPOL.51: Exchanges of information

1. Exchanges of information between the competent authorities shall comply with the objective and provisions of this Chapter. Personal data shall be processed only for the specific purposes referred to in paragraph 2.

2. The competent authorities shall clearly indicate, at the latest at the moment of transferring personal data, the specific purpose or purposes for which the personal data are being transferred. For transfers to Europol, the purpose or purposes of such transfer of personal data shall be specified in line with the specific purposes of processing set out in the Europol Regulation. If the competent authority of the United Kingdom has not done so, Europol, in agreement with that authority, shall process the information in order to determine the relevance of such information as well as the purpose or purposes for which it is to be further processed. Europol may process information for a purpose different from that for which information has been provided only if authorised so to do by the competent authority of the United Kingdom.

3. The competent authorities receiving the personal data shall give a written [commitment] stating that such data will be processed only for the purpose for which they were transferred. The personal data shall be deleted as soon as they are no longer necessary for the purpose for which they were transferred.

#### Article LAW.EUROPOL.52: Restrictions on access to and further use of transferred personal data

1. The transferring competent authority may indicate, at the moment of transferring personal data, any restriction on access thereto or the use to be made thereof, in general or specific terms, including as regards its onward transfer, erasure or destruction after a certain period of time, or the further processing of it. Where the need for such restrictions becomes apparent after the personal data have been transferred, the transferring competent authority shall inform the receiving competent authority accordingly.

2. The receiving competent authority shall comply with any restriction on access or further use of the personal data indicated by the transferring competent authority as described in paragraph 1.

3. Each Party shall ensure that personal data transferred under this Chapter have not been obtained in violation of internationally recognised human rights and are not used to request, hand down or execute a death penalty or any form of cruel or inhuman treatment.

#### Article LAW.EUROPOL.53: Different categories of data subjects

1. The transfer of personal data in respect of victims of a criminal offence, witnesses or other persons who can provide information concerning criminal offences, or in respect of persons under the age of 18, shall be prohibited unless such transfer is strictly necessary and proportionate in individual cases for preventing or combating a criminal offence.

2. The Parties shall ensure that the processing of personal data under paragraph 1 is subject to additional safeguards, including restrictions on access, additional security measures and limitations on onward transfers.

#### Article LAW.EUROPOL.54: Assessment of reliability of the source and accuracy of information

1. The competent authorities shall indicate as far as possible, at latest at the moment of transferring the information, the reliability of the source of the information on the basis of the following criteria:

- (a) where there is no doubt of the authenticity, trustworthiness and competence of the source, or if the information is supplied by a source who, in the past, has proved to be reliable in all instances;



- (b) where the information is provided by a source from whom information received has in most instances proved to be reliable;
- (c) where the information is provided by a source from whom information received has in most instances proved to be unreliable;
- (d) where the reliability of the source cannot be assessed.

2. The competent authorities shall indicate as far as possible, at latest at the moment of transferring the information, the accuracy of the information on the basis of the following criteria:

- (a) information the accuracy of which is not in doubt;
- (b) information known personally to the source but not known personally to the official passing it on;
- (c) information not known personally to the source but corroborated by other information already recorded;
- (d) information which is not known personally to the source and cannot be corroborated.

3. Where the receiving competent authority, on the basis of information already in its possession, comes to the conclusion that the assessment of information or of its source supplied by the transferring competent authority in accordance with paragraphs 1 and 2 needs correction, it shall inform that competent authority and shall attempt to agree on an amendment to the assessment. The receiving competent authority shall not change the assessment of information received or of its source without such agreement.

4. If a competent authority receives information without an assessment, it shall attempt as far as possible and where possible in agreement with the transferring competent authority to assess the reliability of the source or the accuracy of the information on the basis of information already in its possession.

5. If no reliable assessment can be made the information shall be evaluated as at paragraph 1 (d) and paragraph 2(d) above.

#### Article LAW.EUROPOL.55: Secure Communication Line

1. The Parties agree to the establishment, implementation and operation of a secure communication line for the purpose of exchange of information between Europol and the competent authority of the United Kingdom.

2. Administrative arrangements between Europol and the competent authority of the United Kingdom as referred to in Article LAW.EUROPOL.57 [Exchange of sensitive non-classified and classified information ] shall regulate the secure communication line's terms and conditions of use.

#### Article LAW.EUROPOL.56: Liability for unauthorised or incorrect personal data processing

1. The competent authorities shall be liable, in accordance with their respective legal frameworks, for any damage caused to an individual as a result of legal or factual errors in information exchanged. In order to avoid liability under their respective legal frameworks vis-à-vis an injured party, neither Europol nor the competent authorities of the United Kingdom may plead that the respective other competent authority had transferred inaccurate information.

2. If these legal or factual errors occurred as a result of information erroneously communicated or of failure on the part of either Europol or the competent authorities of the United Kingdom to comply with their obligations, they shall be bound to repay, on request, any amounts paid as compensation under paragraph 1 above, unless the information was used by Europol or the competent authorities of the United Kingdom in breach of this Chapter.

3. Europol and the competent authorities of the United Kingdom shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2 above.

#### Article LAW.EUROPOL.57: Exchange of sensitive non-classified and classified information

The exchange of sensitive non-classified and classified information, if necessary under this Chapter, shall be regulated by an Administrative Arrangement on Confidentiality concluded between Europol and the competent authorities of the United Kingdom on the basis of the Protocol on the Security of Classified Information and after Europol has received the approval of the Commission.

#### Article LAW.EUROPOL.58: Administrative arrangement

The details of cooperation between the Parties as appropriate to implement provisions of this Chapter shall be the subject of an administrative arrangement concluded between Europol and the competent authorities of the United Kingdom in accordance with Article 25(1) of Regulation (EU) 2016/794.

#### Article LAW.EUROPOL.59: Notification of implementation

1. The competent authorities shall make publicly available a document setting out in an intelligible form the provisions regarding the processing of personal data transferred under this Chapter including the means available for the exercise of the rights of data subjects. Each Party shall ensure that a copy of that document be provided to the other Party.

2. Where not already in place, the competent authorities shall adopt rules specifying how compliance with the provisions regarding the processing of personal data will be enforced in practice. A copy of these rules shall be sent to the other Party and the respective supervisory authorities.

#### Article LAW.EUROPOL.60: Powers of Europol

Nothing in this Chapter shall be construed as creating an obligation on Europol to cooperate with the United Kingdom competent authorities beyond Europol's competence as set out in the relevant Union legislation.

## Chapter six: Cooperation with Eurojust

### Article LAW.EUROJUST.61: Objective

The objective of this Chapter is to establish cooperation between Eurojust and the competent authorities of the United Kingdom in combatting forms of serious crimes as defined in Article LAW.EUROJUST.63 [Forms of crime].

### Article LAW.EUROJUST.62: Definitions

For the purpose of this Chapter, the following definitions apply:

- (a) “Eurojust” means European Union Agency for Criminal Justice Cooperation (Eurojust), set up under Regulation (EU) 2018/1727 (the “Eurojust Regulation”);
- (b) “competent authority” means, for the Union, Eurojust, represented by the College or a National Member and, for the United Kingdom a domestic authority responsible under domestic law for investigating and prosecuting criminal offences.

The United Kingdom shall by [XXXXX] notify the Specialised Committee on Law enforcement and judicial cooperation of the authorities considered as competent authority for the purpose of this Chapter and provide a short description of their competences.

- (c) “College” means the College of Eurojust, as referred to in the Eurojust Regulation;
- (d) “National Member” means the National Member seconded to Eurojust by each Member State of the Union, as referred to in the Eurojust Regulation;
- (e) “Deputy” means a person who shall be able to act on behalf of or substitute the National Member, as referred to in the Eurojust Regulation;
- (f) “Assistant” means a person who may assist a National Member or the Liaison Prosecutor, as referred to in the Eurojust Regulation and in Article [xy] of this Agreement;
- (g) “Liaison Prosecutor” means a public prosecutor seconded by the United Kingdom to Eurojust and subject to the domestic legislation of the United Kingdom as regards his or her status;
- (h) “Liaison Magistrate” means a magistrate posted by Eurojust to the United Kingdom in accordance with the Eurojust Regulation;
- (i) “Domestic Correspondent for Terrorism Matters” means one of the contact points designated by the United Kingdom authorities in accordance with Article LAW.EUROJUST.65 [Contact point to Eurojust] of this Agreement, responsible for handling correspondence related to terrorism matters;
- (j) “Judicial authorities” for the United Kingdom means [PLACEHOLDER];
- (k) “Administrative Director” means the Administrative Director as referred to in the Eurojust Regulation;
- (l) “Eurojust staff” means the staff referred to in the Eurojust Regulation;

#### Article LAW.EUROJUST.63: Forms of crime

1. The cooperation as established under this Chapter shall relate to all forms of serious crime within the competence of Eurojust, as listed in ANNEX LAW-7, including related criminal offences.
2. Related criminal offences shall be the criminal offences committed in order to procure the means of committing forms of crime referred to in paragraph 1 of this Article, criminal offences committed in order to facilitate or carry out such acts, and criminal offences committed to ensure the impunity of such acts.
3. Where the list of forms of crime for which Eurojust is competent under Union law is changed, the Specialised Committee on Law enforcement and judicial cooperation may, from the date when the change to Eurojust's competence enters into force, upon a proposal from the Union, amend ANNEX LAW-7 accordingly.

#### Article LAW.EUROJUST.64: Scope of cooperation

The Parties shall ensure that Eurojust and the competent authorities of the United Kingdom cooperate in the fields of activity set forth in Articles 2 and 54 of the Eurojust Regulation and in this Chapter.

#### Article LAW.EUROJUST.65: Contact point to Eurojust

1. The United Kingdom shall put in place or appoint at least one contact point to Eurojust within the competent authorities of the United Kingdom.
2. The United Kingdom shall designate one of its contact points as the United Kingdom Domestic Correspondent for Terrorism Matters.
3. The United Kingdom shall communicate to the Specialised Committee on Law enforcement and judicial cooperation contact points referred to in paragraphs 1 and 2.

#### Article LAW.EUROJUST.66: Liaison Prosecutor

1. To facilitate cooperation as laid down in this Chapter, the United Kingdom competent authority shall second a Liaison Prosecutor to Eurojust.
2. The mandate and the duration of secondment shall be determined by the United Kingdom competent authority.
3. The Liaison Prosecutor may be assisted by two persons. When necessary, these persons may replace him or her.
4. The United Kingdom competent authority shall inform Eurojust of the nature and extent of the judicial powers of the Liaison Prosecutor within the United Kingdom own territory to accomplish his or her tasks in accordance with the purpose of this Chapter. The United Kingdom competent authority shall establish the competence of its Liaison Prosecutor to act in relation to foreign judicial authorities.
5. The Liaison Prosecutor shall have access to the information contained in the domestic criminal records or in any other register of the United Kingdom in the same way as stipulated by the United Kingdom legislation in the case of a prosecutor or person of equivalent competence.

6. The Liaison Prosecutor shall have the power to contact the competent authorities of the United Kingdom directly.
7. The details of the Liaison Prosecutor's tasks referred to in paragraph 2, their rights and obligations and the costs involved, shall be governed by working arrangements concluded between Eurojust and the competent authorities of the United Kingdom as referred to in Article LAW.EUROJUST.74 [channels of transmission]
8. The working documents of the Liaison Prosecutor shall be held inviolable by Eurojust.

#### Article LAW.EUROJUST.67: Liaison Magistrate

1. For the purpose of facilitating judicial cooperation with the United Kingdom in cases in which Eurojust provides assistance, Eurojust may post a Liaison Magistrate to the United Kingdom, in accordance with Article 53 of the Eurojust Regulation.
2. The details of liaison Magistrate' tasks referred to in paragraph 2, their rights and obligations and the costs involved, shall be governed by working arrangements concluded between Eurojust and the competent authorities of the United Kingdom as referred to in Article LAW.EUROJUST.62 [Definitions].

#### Article LAW.EUROJUST.68: Operational and strategic meetings

1. The Liaison Prosecutor, his or her assistant or assistants, and representatives of other competent authorities of the United Kingdom, including the contact point to Eurojust, may participate in operational and strategic meetings, at the invitation of the President of the College and with the approval of the National Members concerned.
2. National Members, their deputies and assistants, the Administrative Director and Eurojust staff may also attend meetings organised by the Liaison Prosecutor or other competent authorities of the United Kingdom, including the contact point to Eurojust.

#### Article LAW.EUROJUST.69: Exchange of information

Eurojust and the United Kingdom competent authorities may exchange any non- personal data in so far as relevant for the cooperation set out in Article LAW.EUROJUST.63, LAW.EUROJUST.65 and Article LAW.EUROJUST.66 and subject to any restrictions pursuant to Article LAW.EUROJUST.73.

#### Article LAW.EUROJUST.70: Exchange of personal data

1. Personal data requested and received by competent authorities under this Chapter shall be processed by them only for the objectives set out in Article LAW.EUROJUST.63 [Forms of crime], LAW.EUROJUST.65 [Contact point to Eurojust] and Article LAW.EUROJUST.66 [Liaison Prosecutor], the specific purposes referred to in paragraph 2 and subject to the restrictions on access or further use referred to in paragraph 3.
2. The transferring competent authority shall clearly indicate, at the latest at the moment of transferring personal data, the specific purpose or purposes for which the data are being transferred.
3. The transferring competent authority may indicate, at the moment of transferring personal data, any restriction on access thereto or the use to be made thereof, in general or specific terms, including as regards its onward transfer, erasure or destruction after a certain period of time, or the

further processing of it. Where the need for such restrictions become apparent after the information has been provided, the transferring authority shall inform the receiving authority accordingly.

4. The receiving competent authority shall comply with any restriction on access or further use of the personal data indicated by the transferring competent authority as described in paragraph 3.

#### Article LAW.EUROJUST.71: Channels of transmission

Information shall be exchanged:

- (a) either between the Liaison Prosecutor or, if no Liaison Prosecutor is appointed or otherwise available, the United Kingdom's contact point to Eurojust and the National Members concerned or the College; or
- (b) if Eurojust has posted a Liaison Magistrate to the United Kingdom, between the Liaison Magistrate and any competent authority of the United Kingdom; or
- (c) directly between a competent authority in the United Kingdom and the National Members concerned or the College. In this event, the Liaison Prosecutor or [if applicable] the Liaison Magistrate, shall be informed about any such information exchanges.
- (d) The competent authorities may agree to use other channels for the exchange of information in particular cases.
- (e) The competent authorities shall ensure that their respective representatives are authorised to exchange information at the appropriate level and in accordance with respectively United Kingdom legislation and the Eurojust Regulation, and are adequately screened.

#### Article LAW.EUROJUST.72: Liability for unauthorized or incorrect personal data processing

1. The competent authorities shall be liable, in accordance with their respective legal frameworks, for any damage caused to an individual as a result of legal or factual errors in information exchanged. In order to avoid liability under their respective legal frameworks vis-à-vis an injured party, neither Eurojust nor the competent authorities of the United Kingdom may plead that the respective other competent authority had transferred inaccurate information.

2. If these legal or factual errors occurred as a result of information erroneously communicated or of failure on the part of either Eurojust or the competent authorities of the United Kingdom to comply with their obligations, they shall be bound to repay, on request, any amounts paid as compensation under paragraph 1 above, unless the information was used by Eurojust or the competent authorities of the United Kingdom in breach of this Chapter.

3. Eurojust and the competent authorities of the United Kingdom shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2 above.

#### Article LAW.EUROJUST.73: Exchange of sensitive non-classified and classified information

The exchange of sensitive non-classified and classified information, if necessary under this Chapter, shall be regulated by a Working Arrangement on Confidentiality concluded between Eurojust and the competent authorities of the United Kingdom on the basis of Protocol No XX on the Security of Classified Information and after Eurojust has received the approval of the Commission

#### Article LAW.EUROJUST.74: Working arrangement

The modalities of cooperation between the Parties as appropriate to implement this Chapter shall be the subject of a working arrangement concluded between Eurojust and the competent authorities of the United Kingdom in accordance with Article 47(3) and 56(3) of Regulation (EU) 2018/1727.

#### Article LAW.EUROJUST.75: Powers of Eurojust

Nothing in this Chapter shall be construed as creating an obligation on Eurojust to cooperate with the competent authorities of the United Kingdom beyond Eurojust's competence as set out in the relevant Union legislation.

### Chapter seven: Surrender

#### Article LAW.SURR.76: Objective

The objective of this Chapter is to ensure that the extradition system between, on the one hand, the Member States and, on the other hand, the United Kingdom shall be based on a mechanism of surrender pursuant to an arrest warrant in accordance with the terms of this Chapter.

#### Article LAW.SURR.77: Definitions

For the purpose of this Chapter, the following definitions apply:

- (a) "arrest warrant" means a judicial decision issued either by a Member State with a view to the arrest and surrender by the United Kingdom of a requested person, or by the United Kingdom with a view to the arrest and surrender by a Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
- (b) "judicial authority" means a judge, a court or a public prosecutor.

#### Article LAW.SURR.78: Scope

1. An arrest warrant may be issued for acts punishable by the law of the issuing State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.
2. Without prejudice to paragraphs 3 and 4, surrender shall be subject to the condition that the acts for which the arrest warrant has been issued constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.
3. Subject to Article LAW.SURR.79 [Grounds for mandatory non-execution of the arrest warrant], Article LAW.SURR.80 (1)(b) to (h), Article LAW.SURR.81 [Political offence exception], Article LAW.SURR.82 [Nationality exception] and Article LAW.SURR.83 [Guarantees to be given by the issuing State in particular cases], in no case shall a State refuse to execute an arrest warrant issued in relation to the behaviour of any person who contributes to the commission by a group of persons acting with a common purpose of one or more offences in the field of terrorism referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism or in Articles 3 to 14 of the EU Directive of 15 March 2017 on combating terrorism, or in relation to illicit trafficking in narcotic drugs and psychotropic substances, or murder, grievous bodily injury, kidnapping, illegal restraint, hostage-taking and rape, punishable by deprivation of liberty or a detention order of a

maximum of at least 12 months, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution shall be intentional and made with the further knowledge that his or her participation will contribute to the achievement of the organisation's criminal activities.

4. The United Kingdom, on the one hand, and the Union, on behalf of any of its Member States, on the other hand may make a declaration to the effect that, on the basis of reciprocity, the condition of double criminality referred to in paragraph 2 shall not be applied under the conditions set out hereafter. The following offences, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing State, shall, under the terms of this Agreement and without verification of the double criminality of the act, give rise to surrender pursuant to an arrest warrant:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and varieties,
- facilitation of unauthorized entry and residence,
- murder,
- grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.



Article LAW.SURR.79: Grounds for mandatory non-execution of the arrest warrant

Execution of the arrest warrant shall be refused in the following cases:

- (a) if the offence on which the arrest warrant is based is covered by amnesty in the executing State, where that State had jurisdiction to prosecute the offence under its own criminal law;
- (b) if the competent executing judicial authority is informed that the requested person has been finally judged by a State in respect of the same acts provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State;
- (c) if the person who is the subject of the arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article LAW.SURR.80: Other grounds for non-execution of the arrest warrant

1. Execution of the arrest warrant may be refused in the following cases:

- (a) if, in one of the cases referred to in Article LAW.SURR.78 [Scope] (2), the act on which the arrest warrant is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the arrest warrant shall not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;
- (b) where the person who is the subject of the arrest warrant is being prosecuted in the executing State for the same act as that on which the arrest warrant is based;
- (c) where the judicial authorities of the executing State have decided either not to prosecute for the offence on which the arrest warrant is based or to halt proceedings, or where a final judgement has been passed upon the requested person in a State, in respect of the same acts, which prevents further proceedings;
- (d) where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing State and the acts fall within the jurisdiction of that State under its own criminal law;
- (e) if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
- (f) if the arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
- (g) where the arrest warrant relates to offences which:
  - (i) are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such; or

- (ii) have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory;
- (h) if the arrest warrant has been issued for the purpose of executing a custodial sentence or a detention order, where the requested person did not appear in person at the trial resulting in the decision, unless the arrest warrant states that the person, in accordance with further procedural requirements defined in the domestic law of the issuing State:
- (i) in due time:
    - A. either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;
    - and
    - B. was informed that a decision may be handed down if he or she does not appear for the trial;
  - or
  - (ii) being aware of the scheduled trial, had given a mandate to a lawyer, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that lawyer at the trial;
  - or
  - (iii) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:
    - A. expressly stated that he or she does not contest the decision;
    - or
    - B. did not request a retrial or appeal within the applicable time frame;
  - or
  - (iv) was not personally served with the decision but:
    - A. will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;
    - and

B. will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant arrest warrant;

(i) when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

2. In case the arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1 (h) (iv) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. In case a person is surrendered under the conditions of paragraph (1) (h) (iv) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the domestic law of the issuing State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.

#### Article LAW.SURR.81: Political offence exception

1. Execution may not be refused on the ground that the offence may be regarded by the executing State as a political offence, as an offence connected with a political offence or an offence inspired by political motives.

2. The United Kingdom, on the one hand, and the Union, on behalf of any of its Member States, on the other hand, may make, however, a declaration to the effect that paragraph 1 will be applied only in relation to:

(a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism;

(b) offences of conspiracy or association — which correspond to the description of behaviour referred to in Article LAW.SURR.78 [Scope] (3) — to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism; and

(c) Articles 3 to 14 of the Directive of 15 March 2017 on combating terrorism.

3. Where an arrest warrant has been issued by a State having made a declaration as referred to in paragraph 2, or by a State on behalf of which such a declaration has been made, the State executing the arrest warrant, may apply reciprocity.

#### Article LAW.SURR.82: Nationality exception

1. Execution may not be refused on the ground that the person claimed is a national of the executing State.
2. The United Kingdom, on the one hand, and the Union, on behalf of any of its Member States, on the other hand, may make a declaration to the effect that their own nationals will not be surrendered or that surrender of their own nationals will be authorised only under certain specified conditions.
3. Where an arrest warrant has been issued by a State having made a declaration as referred to in paragraph 2, or by a State for which such a declaration has been made, any other State may, in the execution of the arrest warrant, apply reciprocity.

#### Article LAW.SURR.83: Guarantees to be given by the issuing State in particular cases

The execution of the arrest warrant by the executing judicial authority may be subject to the following conditions:

- (a) if the offence on the basis of which the arrest warrant has been issued is punishable by custodial life sentence or lifetime detention order the execution of the said arrest warrant may be subject to the condition that the issuing State gives an assurance deemed sufficient by the executing State that it will review the penalty or measure imposed, on request or at the latest after 20 years, or will encourage the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing State, aiming at a non-execution of such penalty or measure;
- (b) where a person who is the subject of an arrest warrant for the purposes of prosecution is a national or resident of the executing State, surrender may be subject to the condition that the person, after being heard, is returned to the executing State in order to serve there the custodial sentence or detention order passed against him in the issuing State.

#### Article LAW.SURR.84: Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing State which is competent to issue an arrest warrant by virtue of the domestic law of that State.
2. The executing judicial authority shall be the judicial authority of the executing State which is competent to execute the arrest warrant by virtue of the domestic law of that State.
3. The Parties shall inform each other of their competent authorities.

#### Article LAW.SURR.85: Recourse to the central authority

1. The Parties may notify each other of the central authority for each State, having designated such an authority, or, when the legal system of the relevant State so provides, of more than one central authority to assist the competent judicial authorities.
2. In doing so the Parties may indicate that, as a result of the organisation of the internal judicial system of the relevant States, the central authority(ies) is/are responsible for the administrative transmission and reception of arrest warrants as well as for all other official correspondence relating thereto. These indications shall be binding upon all the authorities of the issuing State.

Article LAW.SURR.86: Content and form of the arrest warrant

1. The arrest warrant shall contain the following information set out in accordance with the form contained in the ANNEX LAW-8:

- (a) the identity and nationality of the requested person;
- (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
- (c) evidence of an enforceable judgement, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Article LAW.SURR.77 [Definitions] and Article LAW.SURR.78 [Scope];
- (d) the nature and legal classification of the offence, particularly in respect of Article LAW.SURR.78 [Scope];
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
- (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing State;
- (g) if possible, other consequences of the offence.

2. The arrest warrant must be translated into the official language or one of the official languages of the executing State. Any Party may, before the date of entry into force of this Agreement or at a later date, make a declaration to the effect that a translation in one or more other official languages of a State will be accepted.

Article LAW.SURR.87: Transmission of an arrest warrant

When the location of the requested person is known, the issuing judicial authority may transmit the arrest warrant directly to the executing judicial authority.

Article LAW.SURR.88: Detailed procedures for transmitting an arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, in order to obtain that information from the executing State.

2. The issuing judicial authority may call on the International Criminal Police Organisation ("Interpol") to transmit an arrest warrant.

3. The issuing judicial authority may forward the arrest warrant by any secure means capable of producing written records under conditions allowing the executing State to establish its authenticity.

4. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the States.

5. If the authority which receives an arrest warrant is not competent to act upon it, it shall automatically forward the arrest warrant to the competent authority in its State and shall inform the issuing judicial authority accordingly.

Article LAW.SURR.89: Rights of a requested person

1. When a requested person is arrested for the purpose of the execution of an arrest warrant, the executing judicial authority shall, in accordance with its domestic law, inform that person of the arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority. The requested person shall be provided promptly with an appropriate Letter of Rights containing information on the rights referred to in this Article and on the right to be heard by a judicial authority, if the requested person does not consent to the surrender. The Letter of Rights shall be drafted in a simple and accessible language.
2. A requested person who is arrested for the purpose of the execution of an arrest warrant and who does not speak or understand the language of the proceedings shall have the right to a translation of the arrest warrant and to interpretation during the relevant proceedings.
3. A requested person shall have the right to be assisted by a lawyer in accordance with the domestic law of the executing State upon arrest.
4. The competent authority in the executing State shall, without undue delay after arrest, inform the requested persons that they have the right to appoint a lawyer in the issuing State, for the purpose of assisting the lawyer in the executing State in the arrest warrant proceedings.
5. Where the requested person wishes to exercise the right to appoint a lawyer in the issuing State and does not have such a lawyer, the competent authority in the executing State shall promptly inform the competent authority in the issuing State. The competent authority of that State shall, without undue delay, provide the requested person with information to facilitate them in appointing a lawyer there.
6. The right of a requested person to appoint a lawyer in the issuing State is without prejudice to the time-limits set out in Article LAW.SURR.102 [Time limits for surrender of the person].
7. A requested person shall have a right to legal aid in the executing State upon arrest until surrender of the person or until the decision not to surrender the person becomes final.
8. A requested person who is subject of the arrest warrant proceeding for the purpose of conducting a criminal prosecution shall have the right to legal aid in the issuing State for the purpose of such proceedings in the executing State, in so far as legal aid is necessary to ensure effective access to justice.
9. A requested person who is arrested shall have the right to have at least one person, such as a relative or an employer, nominated by the person, informed of the arrest without undue delay if the person so wishes, unless temporary derogations are justified in the light of the particular circumstances of the case on the basis of the following compelling reasons:
  - (a) where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
  - (b) where there is an urgent need to prevent a situation where criminal proceedings could be substantially jeopardised.

10. A requested person who is arrested shall have the right to communicate without delay with at least one third person, such as a relative nominated by the person. The exercise of this rights may be limited or deferred in view of imperative requirements or proportionate operational requirements.

11. A requested person who is a non-national of the executing State and who is arrested shall have the right to have the consular authorities of his State of nationality informed of the arrest without undue delay and to communicate with those authorities, if the person so wishes.

#### Article LAW.SURR.90 Rights of a requested person who is a child

In addition to the rights provided for in Article LAW.SURR.89 [Rights of a requested person], where the requested person is a child, that is a person below the age of 18 years, that person shall have the right:

- a) to have the holder of parental responsibility informed as soon as possible of the arrest and of the reasons pertaining thereto, unless this would be contrary to the best interests of the child, or if it is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown, or he or she could, on the basis of objective and factual circumstances substantially jeopardise the proceedings, in which case another appropriate adult who is nominated by the child and accepted as such by the competent authority shall be informed;
- b) to be assisted by a lawyer in accordance with the domestic law of the executing State upon arrest;
- c) to a medical examination without undue delay with a view, in particular, to assessing the general mental and physical condition;
- d) to be held separately from adults unless it is considered to be in the child's best interests not to do so;
- e) to have privacy respected;
- f) to be accompanied by the holder of parental responsibility or another appropriate adult during court hearings in which they are involved.

#### Article LAW.SURR.91: Keeping the person in detention

When a person is arrested on the basis of an arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing State. The person may be released provisionally at any time in conformity with the domestic law of the executing State, provided that the competent authority of the said State takes all the measures it deems necessary to prevent the person absconding.

#### Article LAW.SURR.92: Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the 'speciality rule', referred to in Article LAW.SURR.106 [Possible prosecution for other offences] (2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing State.

2. Each State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to a lawyer.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing State.

4. In principle, consent may not be revoked. Each State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article LAW.SURR.102 [Time limits for surrender of the person]. The United Kingdom, on the one hand, and the Union, on behalf of any of its Member States, on the other hand, may make, at the time of notification provided for in Article LAW.OTHER.134 [Notifications] (1), a declaration indicating that they wish to have recourse to this possibility, specifying the procedures whereby revocation of consent shall be possible and any amendment to them.

#### Article LAW.SURR.93: Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article LAW.SURR.92 [Consent to surrender], he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing State.

#### Article LAW.SURR.94: Surrender decision

1. The executing judicial authority shall decide, within the time limits and under the conditions defined in this Chapter, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Article LAW.SURR.79 [Grounds for mandatory non-execution of the arrest warrant] to Article LAW.SURR.81 [Political offence exception], Article LAW.SURR.83 [Guarantees to be given by the issuing State in particular cases] and Article LAW.SURR.85 [Recourse to the central authority], be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article LAW.SURR.96 [Time limits and procedures for the decision to execute the arrest warrant].

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

#### Article LAW.SURR.95: Decision in the event of multiple requests

1. If two or more States have issued a European arrest warrant or an arrest warrant for the same person, the decision as to which of those warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the arrest warrant or European arrest warrant and whether they have been issued for the purposes of prosecution or for execution of a custodial sentence or detention order, and of legal obligations of Member States deriving from Articles 18 and 21 of the Treaty on the Functioning of the European Union.



2. The executing judicial authority of a Member State may seek the advice of Eurojust when making the choice referred to in paragraph 1.

3. In the event of a conflict between an arrest warrant and a request for extradition presented by a third State, the decision as to whether the arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to States' obligations under the Statute of the International Criminal Court.

Article LAW.SURR.96: Time limits and procedures for the decision to execute the arrest warrant

1. An arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. The Union, on behalf of any of its Member States, may make, at the time of notification provided for in Article LAW.OTHER.4 [Notifications] (1), a declaration indicating in which cases paragraphs 3 and 4 will not apply. The United Kingdom may apply reciprocity in relation to the Member States concerned.

6. As long as the executing judicial authority has not taken a final decision on the arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

7. Reasons must be given for any refusal to execute an arrest warrant.

Article LAW.SURR.97: Situation pending the decision

1. Where the arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

(a) either agree that the requested person should be heard according to Article LAW.SURR.98 [Hearing the person pending the decision];

or

(b) agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing State to attend hearings concerning him or her as part of the surrender procedure.

Article LAW.SURR.98: Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by a lawyer designated in accordance with the law of the State of the requesting judicial authority.
2. The requested person shall be heard in accordance with the law of the executing State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.
3. The competent executing judicial authority may assign another judicial authority of its State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article LAW.SURR.99: Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing State, the time limits referred to in Article LAW.SURR.96 [Time limits and procedures for the decision to execute the arrest warrant] shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.
2. The executing State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.
3. Where power to waive the privilege or immunity lies with an authority of the executing State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State, third State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article LAW.SURR.100: Competing international obligations

This Agreement shall not prejudice the obligations of the executing State where the requested person has been extradited to that State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the State which issued the arrest warrant. The time limits referred to in Article LAW.SURR.96 [Time limits and procedures for the decision to execute the arrest warrant] shall not start running until the day on which these speciality rules cease to apply.

Pending the decision of the third State from which the requested person was extradited, the executing State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article LAW.SURR.101: Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the arrest warrant.

#### Article LAW.SURR.102: Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.
2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the arrest warrant.
3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of the issuing or executing State, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

#### Article LAW.SURR.103: Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the arrest warrant.
2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing State.

#### Article LAW.SURR.104: Transit

1. Each State shall permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:
  - (a) the identity and nationality of the person subject to the arrest warrant;
  - (b) the existence of an arrest warrant;
  - (c) the nature and legal classification of the offence;
  - (d) the description of the circumstances of the offence, including the date and place.
2. The State, on behalf of which a declaration has been made in accordance with Article LAW.SURR.82 [Nationality exception] (2), to the effect that nationals will not be surrendered or that surrender will be authorised only under certain specified conditions, may, under the same terms, refuse the transit of its nationals through its territory or submit it to the same conditions.

3. The Parties shall notify each other of the authority designated for each State responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests.

4. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 3 by any means capable of producing a written record. The State of transit shall notify its decision by the same procedure.

5. This Chapter does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the authority designated pursuant to paragraph 3 with the information provided for in paragraph 1.

6. Where a transit concerns a person who is to be extradited from a third State to a State, this Article shall apply *mutatis mutandis*. In particular the expression 'arrest warrant' as defined in Article LAW.SURR.77[Definitions] (a) shall be deemed to be replaced by 'extradition request'.

Article LAW.SURR.105: Deduction of the period of detention served in the executing State

1. The issuing State shall deduct all periods of detention arising from the execution of an arrest warrant from the total period of detention to be served in the issuing State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article LAW.SURR.85 [Recourse to the central authority] to the issuing judicial authority at the time of the surrender.

Article LAW.SURR.106: Possible prosecution for other offences

1. The United Kingdom, on the one hand, and the Union, on behalf of any of its Member States, on the other hand, may notify each other that, in relations with other States to which the same notification applies, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) the offence is not punishable by a custodial sentence or detention order;
- (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

- (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article LAW.SURR.92 [Consent to surrender];
  - (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to a lawyer;
  - (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.
4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article LAW.SURR.86 [Content and form of the arrest warrant](1) and a translation as referred to in Article LAW.SURR.86 [Content and form of the arrest warrant](2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Chapter. Consent shall be refused on the grounds referred to in Article LAW.SURR.79 [Grounds for mandatory non-execution of the arrest warrant] and otherwise may be refused only on the grounds referred to in Article LAW.SURR.80 [Other grounds for non-execution of the arrest warrant], or Article LAW.SURR.81 [Political offence exception] (2) and Article LAW.SURR.82 [Nationality exception](2). The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Article LAW.SURR.83 [Guarantees to be given by the issuing State in particular cases] the issuing State must give the guarantees provided for therein.

#### Article LAW.SURR.107: Surrender or subsequent extradition

1. The United Kingdom, on the one hand, and the Union, on behalf of any of its Member States, on the other hand, may notify each other that, in relations with other States to which the same notification applies, the consent for the surrender of a person to a State other than the executing State pursuant to an arrest warrant or European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. In any case, a person who has been surrendered to the issuing State pursuant to an arrest warrant may, without the consent of the executing State, be surrendered to a State other than the executing State pursuant to an arrest warrant or European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:
- (a) where the requested person, having had an opportunity to leave the territory of the State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;
  - (b) where the requested person consents to be surrendered to a State other than the executing State pursuant to an arrest warrant or European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing State and shall be recorded in accordance with that State's domestic law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to a lawyer;
  - (c) where the requested person is not subject to the speciality rule, in accordance with Article LAW.SURR.106 [Possible prosecution for other offences] (3)(a), (e), (f) and (g).

3. The executing judicial authority shall consent to the surrender to another State according to the following rules:

- (a) the request for consent shall be submitted in accordance with Article LAW.SURR.87 [Transmission of an arrest warrant], accompanied by the information mentioned in Article LAW.SURR.86 [Content and form of the arrest warrant](1) and a translation as stated in Article LAW.SURR.86 [Content and form of the arrest warrant](2);
- (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Agreement;
- (c) the decision shall be taken no later than 30 days after receipt of the request;
- (d) consent shall be refused on the grounds referred to in Article LAW.SURR.79 [Grounds for mandatory non-execution of the arrest warrant] and otherwise may be refused only on the grounds referred to in Article LAW.SURR.80 [Other grounds for non-execution of the arrest warrant] or Article LAW.SURR.81 [Political offence exception] (2) and Article LAW.SURR.82 [Nationality exception](2).

4. For the situations referred to in Article LAW.SURR.83 [Guarantees to be given by the issuing State in particular cases], the issuing State must give the guarantees provided for therein.

5. Notwithstanding paragraph 1, a person who has been surrendered pursuant to an arrest warrant shall not be extradited to a third State without the consent of the competent authority of the State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that State is bound, as well as with its domestic law.

#### Article LAW.SURR.108: Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its domestic law, seize and hand over property which:

- (a) may be required as evidence; or
- (b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing State, on condition that it is returned.

4. Any rights which the executing State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing State shall return the property without charge to the executing State as soon as the criminal proceedings have been terminated.

#### Article LAW.SURR.109: Expenses

1. Expenses incurred in the territory of the executing State for the execution of an arrest warrant shall be borne by that State.

2. All other expenses shall be borne by the issuing State.

#### Article LAW.SURR.110: Relation to other legal instruments

1. Without prejudice to their application in relations between States and third States, this Chapter shall, from its date of entry into force, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the United Kingdom, on the one hand, and Member States, on the other hand:

- (a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978; and
- (b) the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned as amended by the 2003 Protocol once it will enter into force.

2. Where the conventions or agreements referred to in paragraph 1 apply to the territories of States or to territories for whose external relations a State is responsible to which this Chapter does not apply, these instruments shall continue to govern the relations existing between those territories and the other States.

#### Article LAW.SURR.111: Review of declarations

When carrying out the joint review of this Chapter as referred to in Article LAW.OTHER.135 [Review and evaluation](1)(b), the Parties shall also consider the need to maintain the declarations made under Article LAW.SURR.78 [Scope](4), Article LAW.SURR.81 [Political offence exception] (2), Article LAW.SURR.82 [Nationality exception] (2) and Article LAW.SURR.96 [Time limits and procedures for the decision to execute the arrest warrant] (5) of this Agreement. Where the declarations referred to in Article LAW.SURR.82 [Nationality exception](2) are not renewed, they shall expire five years after the date of entry into force of this Agreement.

#### Article LAW.SURR.112: Ongoing arrest warrants in case of disapplication

Notwithstanding Article.LAW.OTHER.136 [Suspension and disapplication] (1) and (2) and Article FINPROV.8 [Termination], the provisions of this Chapter shall apply in respect of arrest warrants where the requested person was arrested before the disapplication of this Chapter for the purposes of the execution of an arrest warrant, irrespective of the decision of the executing judicial authority as to whether the requested person is to remain in detention or be provisionally released.

#### Chapter eight: Mutual assistance

#### Article LAW.MUTAS.113: Objective

The objective of this Chapter is to supplement the provisions and facilitate the application between Member States to which the following Convention and Protocols are applicable, on the one hand, and the United Kingdom, on the other hand, of:

- a) the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, the "European Mutual Assistance Convention";
- b) the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention;
- c) the Second Additional Protocol of 8 November 2001 to the European Mutual Assistance Convention.

#### Article LAW.MUTAS.114: Definitions

For the purposes of this Chapter, "competent authority" means any authority which is competent to send and/or receive requests for mutual assistance in accordance with the provisions of the

Convention and the Protocols referred to in Article LAW.MUTAS.113 [Objective] and as defined by States in their respective declarations addressed to the Secretary General of the Council of Europe. "Competent authority" shall in any case include the European Public Prosecutor's Office, established in accordance with Council Regulation (EU) 2017/1939, for the purpose of mutual assistance in respect of offences for which the European Public Prosecutor's Office has exercised its competences in accordance with Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939.

#### Article LAW.MUTAS.115: Recourse to a different type of investigative measure

1. The competent authority of the requested State shall have, wherever possible, recourse to an investigative measure other than that provided for in the request for mutual assistance where:

- (a) the investigative measure indicated in the request does not exist under the law of the requested State; or
- (b) the investigative measure indicated in the request would not be available in a similar domestic case.

2. Without prejudice to the grounds for refusal available under the Convention and Protocols referred to in Article LAW.MUTAS.113 [Objective], as well as under Article LAW.MUTAS.117 [Ne bis in idem], paragraph (1) does not apply to the following investigative measures, which always have to be available under the law of the requested State:

- (a) the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the competent authority of the requested State in the framework of criminal proceedings;
- (b) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the requested State;
- (c) any non-coercive investigative measure as defined under the law of the requested State;
- (d) the identification of persons holding a subscription of a specified phone number or IP address.

3. The competent authority of the requested State may also have recourse to an investigative measure other than that indicated in the request for mutual assistance where the investigative measure selected by the competent authority of the requested State would achieve the same result by less intrusive means than the investigative measure indicated in the request.

4. When the competent authority of the requested State decides to avail itself of the possibility referred to in paragraphs 1 and 3, it shall first inform the competent authority of the requesting State, which may decide to withdraw or supplement the request.

5. Where, in accordance with paragraph 1, the investigative measure indicated in the request does not exist under the law of the requested State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the competent authority of the requested State shall notify the competent authority of the requesting State that it has not been possible to provide the assistance requested.

#### Article LAW.MUTAS.116: Obligation to inform

1. The competent authority of the requested State which receives the request for mutual assistance shall, without delay, and in any case within a week of the reception of the request, acknowledge the receipt thereof. The same obligation shall apply to the authority to which the



request was transmitted in accordance with Article 18 of the Second Additional Protocol of 8 November 2001 to the European Mutual Assistance Convention.

2. The competent authority of the requested State shall inform the competent authority of the requesting State immediately by any means:

(a) if it is impossible to execute the request for mutual assistance due to the fact that the request is incomplete or manifestly incorrect; or

(b) if the competent authority of the requested State, in the course of the execution of the request for mutual assistance, considers without further enquiries that it may be appropriate to carry out investigative measures not initially foreseen, or which could not be specified when the request for mutual assistance was made, in order to enable the competent authority of the requesting State to take further action in the specific case.

#### Article LAW.MUTAS.117: Ne bis in idem

Mutual assistance may be refused, in addition to the grounds listed in the Convention and the Protocols referred to in Article LAW.MUTAS.113 [Objective], if the person for whom the assistance is requested and who is subject to criminal investigations, prosecutions or other proceedings, including judicial proceedings, in the requesting State, has been finally judged by another State in respect of the same acts provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State.

#### Article LAW.MUTAS.118: Time limits

1. A request for mutual assistance shall be executed as soon as possible but no later than 120 days after its receipt.

2. Where it is indicated in the request for mutual assistance that, due to procedural deadlines, the seriousness of the offence or other particularly urgent circumstances, a shorter deadline than that provided in paragraph 1 is necessary, or where it is indicated in the request that a measure for mutual assistance must be carried out on a specific date, the requested State shall take as full account as possible of this requirement.

3. Where a request for mutual assistance is made for taking of provisional measures pursuant to Article 24 of the Second Additional Protocol of 8 November 2001 to the European Mutual Assistance Convention, the competent authority of the requested State shall decide and communicate the decision on the provisional measure as soon as possible and, wherever practicable, within 24 hours of receipt of the request. Before lifting any provisional measure taken pursuant to this article, the competent authority of the requested State shall, wherever possible, give the competent authority of the requesting State an opportunity to present its reasons in favour of continuing the measure.

4. Where in a specific case, the time limit set out in paragraph 1 or the specific date set out in paragraph 2 cannot be met, the competent authority of the requested State shall, without delay, inform the competent authority of the requesting State by any means, giving the reasons for the delay and shall consult with the competent authority of the requesting State on the appropriate timing to execute the request for mutual assistance.

## Article LAW.MUTAS.119: Joint Investigation Teams

The competent authorities shall consider to use combined legal bases for the mutual agreement of a Joint Investigation Teams to address the specific needs of the different authorities especially setting out on one hand the relations between the United Kingdom and the Member States and on the other hand, ensuring the application of Union law for the relationship between Member States within the Joint Investigation Team.

## Chapter nine: Exchange of information extracted from criminal records

### Article LAW.EXINF.120: Objective

1. The objective of this Chapter is to enable exchanges of information extracted from criminal records between, on the one hand, the Member States and, on the other hand, the United Kingdom.
2. In the relations between the United Kingdom and the Member States and without prejudice to their application in the relations between States and third States, the provisions of this Chapter:
  - (a) supplement Article 13 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its Additional Protocols of 17 March 1978 and 8 November 2001; and
  - (b) replace Article 22 (1) of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, as supplemented by Article 4 of its Additional Protocol of 17 March 1978.
3. In their relations among each other, the Member States, on the one hand, and the United Kingdom, on the other hand, shall waive the right to rely on their reservations to Article 13 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and to Article 4 of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 17 March 1978.

### Article LAW.EXINF.121: Definitions

For the purpose of this Chapter, the following definitions shall apply:

- (a) “conviction” means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent that the decision is entered in the criminal records of the convicting State;
- (b) “criminal proceedings” means the pre-trial stage, the trial stage and the execution of the conviction;
- (c) “criminal record” means the domestic register or registers recording convictions in accordance with domestic law;

### Article LAW.EXINF.122: Central authorities

1. Each State shall designate one or more central authorities competent for exchanges of information extracted from criminal records pursuant to this Chapter.
2. Each State shall inform the Specialised Committee on Law enforcement and judicial cooperation of the central authority or authorities designated in accordance with paragraph 1.

#### Article LAW.EXINF.123: Notifications

1. Each State shall take the necessary measures to ensure that all convictions handed down within its territory are accompanied, when provided to its criminal record, by information on the nationality or nationalities of the convicted person if he is a national of another State.
2. The central authority of each State shall inform the central authorities of any other State of all criminal convictions handed down within its territory in respect of nationals of the latter State, as well as of any subsequent alterations or deletions of information contained in the criminal records, as entered in the criminal records. The central authorities of the States shall communicate such information to each other at least once per month.
3. If the central authority of a State becomes aware of the fact that a convicted person is a national of two or more other States, the relevant information shall be transmitted to each of those States, even if the convicted person is a national of the State within whose territory he was convicted.

#### Article LAW.EXINF.124: Requests for information

1. When information from the criminal record of a State is requested at domestic level for the purposes of criminal proceedings against a person or for any purposes other than that of criminal proceedings, the central authority of that State may, in accordance with its domestic law, submit a request to the central authority of another State for information and related data to be extracted from the criminal record.
2. When a person asks the central authority of a State other than the one of the person's nationality for information on its own criminal record, that central authority shall submit a request to the central authority of the State of the person's nationality for information and related data to be extracted from the criminal record in order to be able to include such information and related data in the extract to be provided to the person concerned.

#### Article LAW.EXINF.125: Replies to requests

1. Replies to the requests referred to in Article 13 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 shall be transmitted by the central authority of the requested State to the central authority of the requesting State, as soon as possible and in any event within a period not exceeding twenty working days from the date the request was received.
2. When replying to requests made for the purpose for recruitment for professional or organised voluntary activities involving direct and regular contacts with children, the Member States and the United Kingdom shall lift any limitations stipulated in their domestic law for the exchange of information extracted from criminal records for other purposes than criminal proceedings.

#### Article LAW.EXINF.126: Channel of communication

The exchange of information extracted from criminal records between the Member States and the United Kingdom shall take place electronically. Technical and procedural specifications are laid down in ANNEX.LAW.9.

### Chapter ten: Anti-money laundering and counter-terrorism financing

#### Article LAW.AML.127: Objective

The objective of this Chapter is to support and strengthen the action by the Union and the United Kingdom for preventing and combating money laundering and terrorism financing, including particularly through compliance with Financial Action Task Force (FATF) standards as well as ensuring high standards on transparency and entities subject to anti-money laundering and counter-terrorism frameworks.

#### Article LAW.AML.128: Definitions

For the purpose of this Chapter, the following definitions apply:

(a) “beneficial owner” means any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(i) in the case of corporate entities:

1. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with the domestic law of the Parties or subject to equivalent international standards which ensure adequate transparency of ownership information.

A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of Member States to decide that a lower percentage may be an indication of ownership or control.

2. if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point;

(ii) in the case of trusts, all following persons:

1. the settlor(s);
2. the trustee(s);
3. the protector(s), if any;
4. the beneficiaries or where the individuals benefiting from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
5. any other natural person exercising ultimate control over the trust by means of direct or indirect ownership or by other means;

(iii) in the case of legal entities such as foundations, and legal arrangements similar to trusts, the natural person(s) holding equivalent or similar positions to those referred to in point (ii).

Article LAW.AML.129: Anti-money laundering and counter-terrorism financing

1. The Parties agree to support international efforts to prevent and fight against money laundering and terrorist financing, particularly through compliance with Financial Action Task Force (FATF) standards and associated cooperation. The Parties recognize the need to cooperate on preventing the use of their financial systems to launder the proceeds of all criminal activity, including drug trafficking and corruption, and to combat the financing of terrorism. This cooperation extends to the seizure and confiscation of assets or funds derived from criminal activity, within their respective legal frameworks and laws.

2. The Parties shall exchange relevant information, as appropriate within their respective legal frameworks and laws, and implement the appropriate measures to combat money laundering and the financing of terrorism, guided by the recommendations of the Financial Action Task Force and standards applied by other relevant international bodies active in the area.

Article LAW.AML.130: Beneficial Ownership Transparency for corporate and other legal entities

1. The Parties shall ensure that corporate and other legal entities incorporated within their territories are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. The Parties shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions.

The Parties shall ensure that those entities are required to provide, in addition to information about their legal owner, information on the beneficial owner to obliged entities when the obliged entities are taking customer due diligence measures in accordance with their domestic anti-money laundering and Counter-Terrorism Financing framework.

The Parties shall require that the beneficial owners of corporate or other legal entities, including through shares, voting rights, ownership interest, bearer shareholdings or control via other means, provide those entities with all the information necessary for the corporate or other legal entity to comply with the requirements in the first subparagraph.

2. The Parties shall require that the information referred to in paragraph 1 can be accessed in a timely manner by their competent authorities and Financial Intelligence Units (FIU).
3. The Parties shall ensure that the information referred to in paragraph 1 is held in a central register, for the EU in each Member State, for example a commercial register, companies register, or a public register.
4. The Parties shall ensure that the information held in the central register referred to in paragraph 3 is adequate, accurate and current, and shall put in place mechanisms to this effect. Such mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In the case of reported discrepancies, the Parties shall ensure that appropriate actions be taken to resolve the discrepancies in a timely manner and, if appropriate, a specific mention be included in the central register in the meantime.
5. The Parties shall ensure that the information on the beneficial ownership is accessible in all cases to:

- (a) competent authorities and FIUs, without any restriction;
- (b) obliged entities, within the framework of customer due diligence in accordance with their domestic anti-money laundering and counter-terrorism financing framework;
- (c) any member of the general public.

The persons referred to in point (c) shall be permitted to access at least the name, the month and year of birth and the country of residence and nationality of the beneficial owner as well as the nature and extent of the beneficial interest held.

The Parties may, under conditions to be determined in domestic law, provide for access to additional information enabling the identification of the beneficial owner. That additional information shall include at least the date of birth or contact details in accordance with data protection rules.

- 6. The Parties may choose to make the information held in their central registers referred to in paragraph 3 available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register.
- 7. The Parties shall ensure that competent authorities and FIUs have timely and unrestricted access to all information held in the central register referred to in paragraph 3 without alerting the entity concerned. The Parties shall also allow timely access by obliged entities when taking customer due diligence measures in accordance with their domestic anti-money laundering and counter terrorist financing framework.

Competent authorities granted access to the central register referred to in paragraph 3 shall be those public authorities with designated responsibilities for combating money laundering or terrorist financing, as well as tax authorities, supervisors of obliged entities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing and seizing or freezing and confiscating criminal assets.

- 8. The Parties shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of the other party in a timely manner and free of charge.
- 9. The Parties shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements with their domestic anti-money laundering and counter-terrorism financing rules. Those requirements shall be fulfilled by using a risk-based approach.
- 10. In exceptional circumstances to be laid down in domestic law of the Parties, where the access referred to in points (b) and (c) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable, the Parties may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. The Parties shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. The Party that has granted exemptions shall publish annual statistical data on the number of exemptions granted and reasons stated.

Exemptions granted pursuant to the first subparagraph shall not apply to the credit institutions and financial institutions, and to notaries and other independent legal professionals that are public

officials, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the:

- (a) buying and selling of real property or business entities;
- (b) managing of client money, securities or other assets;
- (c) opening or management of bank, savings or securities accounts;
- (d) organisation of contributions necessary for the creation, operation or management of companies;
- (e) creation, operation or management of trusts, companies, foundations, or similar structures.

Article LAW.AML.131: Beneficial Ownership Transparency for trusts and other types of legal arrangements

1. The Parties shall ensure that this Article applies to trusts and other types of legal arrangements, such as, inter alia, fiducie, certain types of Treuhand or fideicomiso, where such arrangements have a structure or functions similar to trusts. The Parties shall identify the characteristics to determine where legal arrangements have a structure or functions similar to trusts with regard to such legal arrangements governed under their law.

Each party shall require that trustees of any express trust administered in their territories obtain and hold adequate, accurate and up-to-date information on beneficial ownership regarding the trust. That information shall include the identity of:

- (a) the settlor(s);
- (b) the trustee(s);
- (c) the protector(s) (if any);
- (d) the beneficiaries or class of beneficiaries;
- (e) any other natural person exercising effective control of the trust.

The Parties shall ensure that breaches of this Article are subject to effective, proportionate and dissuasive measures or sanctions.

- 2. The Parties shall ensure that trustees or persons holding equivalent positions in similar legal arrangements as referred to in paragraph 1 of this Article, disclose their status and provide the information referred to in paragraph 1 of this Article to obliged entities in a timely manner, where, as a trustee or as person holding an equivalent position in a similar legal arrangement, they form a business relationship or carry out an occasional transaction above the thresholds set out “ in their domestic anti-money laundering and counter-terrorism financing framework for the application of customer due diligence by obliged entities.
- 3. The Parties shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.
- 4. The Parties shall require that the beneficial ownership information of express trusts and similar legal arrangements as referred to in paragraph 1 shall be held in a central beneficial ownership register set up by the Parties where the trustee of the trust or person holding an equivalent position in a similar legal arrangement is established or resides. For the Union the central registers shall be set up at Member State level.

Where the place of establishment or residence of the trustee of the trust or person holding an equivalent position in similar legal arrangement is outside the territory of the Parties, the information referred to in paragraph 1 shall be held in a central register set up by the party where the trustee of the trust or person holding an equivalent position in a similar legal arrangement enters

into a business relationship or acquires real estate in the name of the trust or similar legal arrangement.

Where the trustees of a trust or persons holding equivalent positions in a similar legal arrangement are established or reside in the territories of different Parties, or where the trustee of the trust or person holding an equivalent position in a similar legal arrangement enters into multiple business relationships in the name of the trust or similar legal arrangement in the territory of the two Parties, a certificate of proof of registration or an excerpt of the beneficial ownership information held in a register of on party may be considered as sufficient to consider the registration obligation fulfilled.

5. The Parties shall ensure that the information on the beneficial ownership of a trust or a similar legal arrangement is accessible in all cases to:
  - (a) competent authorities and FIUs, without any restriction;
  - (b) obliged entities, within the framework of customer due diligence in accordance with their domestic anti-money laundering and counter-terrorism financing framework;
  - (c) any natural or legal person that can demonstrate a legitimate interest;
  - (d) any natural or legal person that files a written request in relation to a trust or similar legal arrangement which holds or owns a controlling interest in any corporate or other legal entity other than those referred to in Article LAW.AML.130 [Beneficial Ownership Transparency for corporate and other legal entities], through direct or indirect ownership, including through bearer shareholdings, or through control via other means.

The information accessible to natural or legal persons referred to in points (c) and (d) of the first subparagraph shall consist of the name, the month and year of birth and the country of residence and nationality of the beneficial owner, as well as nature and extent of beneficial interest held.

The Parties may, under conditions to be determined in their domestic law, provide for access of additional information enabling the identification of the beneficial owner. That additional information shall include at least the date of birth or contact details, in accordance with data protection rules. The Parties may allow for wider access to the information held in the register in accordance with their domestic law.

Competent authorities granted access to the central register referred to in paragraph 3a shall be public authorities with designated responsibilities for combating money laundering or terrorist financing, as well as tax authorities, supervisors of obliged entities and authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, tracing, and seizing or freezing and confiscating criminal assets.

6. The Parties may choose to make the information held in their domestic registers referred to in paragraph 3a available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register.
7. The Parties shall require that the information held in the central register referred to in paragraph 4 is adequate, accurate and current, and shall put in place mechanisms to this effect. Such mechanisms shall include requiring obliged entities and, if appropriate and to the extent that this requirement does not interfere unnecessarily with their functions, competent authorities to report any discrepancies they find between the beneficial ownership information available in the central registers and the beneficial ownership information available to them. In the case of reported discrepancies the Parties shall ensure



that appropriate actions be taken to resolve the discrepancies in a timely manner and, if appropriate, a specific mention be included in the central register in the meantime.

8. The Parties shall ensure that obliged entities do not rely exclusively on the central register referred to in paragraph 4 to fulfil their customer due diligence requirements as laid down in their domestic anti-money laundering and counter-terrorism financing framework. Those requirements shall be fulfilled by using a risk-based approach.
9. The Parties shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of the other party in a timely manner and free of charge.
10. In exceptional circumstances to be laid down in domestic law, where the access referred to in points (b), (c) and (d) of the first subparagraph of paragraph 5 would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or otherwise legally incapable, the Parties may provide for an exemption from such access to all or part of the information on the beneficial ownership on a case-by-case basis. The Parties shall ensure that these exemptions are granted upon a detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the exemption decision and to an effective judicial remedy shall be guaranteed. A party that has granted exemptions shall publish annual statistical data on the number of exemptions granted and reasons stated.

Exemptions granted pursuant to the first subparagraph shall not apply to the credit institutions and financial institutions, and to notaries and other independent legal professionals that are public officials, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the: (i) buying and selling of real property or business entities; (ii) managing of client money, securities or other assets; (iii) opening or management of bank, savings or securities accounts; (iv) organisation of contributions necessary for the creation, operation or management of companies; (v) creation, operation or management of trusts, companies, foundations, or similar structures.

Where a Member State decides to establish an exemption in accordance with the first subparagraph, it shall not restrict access to information by competent authorities and FIUs.

#### Article LAW.AML.132: Business relationships and customer due diligence

1. The Parties shall require that verification of the identity of the customer and the beneficial owner take place before the establishment of a business relationship or the carrying out of the transaction. Whenever entering into a new business relationship with a corporate or other legal entity, or a trust or a legal arrangement having a structure or functions similar to trusts ('similar legal arrangement') which are subject to the registration of beneficial ownership information pursuant to Article LAW.AML.130 [Beneficial Ownership Transparency for corporate and other legal entities] or Article LAW.AML.131 [Beneficial Ownership Transparency for trusts and other types of legal arrangements], the obliged entities shall collect proof of registration or an excerpt of the register.

2. By way of derogation from paragraph 1, the Parties may allow verification of the identity of the customer and the beneficial owner to be completed during the establishment of a business relationship if necessary so as not to interrupt the normal conduct of business and where there is little risk of money laundering or terrorist financing. In such situations, those procedures shall be completed as soon as practicable after initial contact.

3. By way of derogation from paragraph 1, the Parties may allow the opening of an account with a credit institution or financial institution, including accounts that permit transactions in transferable securities, provided that there are adequate safeguards in place to ensure that transactions are not carried out by the customer or on its behalf until full compliance with the customer due diligence requirements laid down in their domestic Anti-Money Laundering and Counter Terrorism framework is obtained.

4. The Parties shall require that obliged entities apply the customer due diligence measures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis, or when the relevant circumstances of a customer change, or when the obliged entity has any legal duty in the course of the relevant calendar year to contact the customer for the purpose of reviewing any relevant information relating to the beneficial owner(s), or if the obliged entity has had this duty under Article 2.26bis (1)(a)[Taxation standards]

5. For life or other investment-related insurance business, the Parties shall ensure that, in addition to the customer due diligence measures required for the customer and the beneficial owner, credit institutions and financial institutions conduct the following customer due diligence measures on the beneficiaries of life insurance and other investment-related insurance policies, as soon as the beneficiaries are identified or designated:

(a) in the case of beneficiaries that are identified as specifically named persons or legal arrangements, taking the name of the person;

(b) in the case of beneficiaries that are designated by characteristics or by class or by other means, obtaining sufficient information concerning those beneficiaries to satisfy the credit institutions or financial institution that it will be able to establish the identity of the beneficiary at the time of the payout.

With regard to points (a) and (b) of the first subparagraph, the verification of the identity of the beneficiaries shall take place at the time of the payout. In the case of assignment, in whole or in part, of the life or other investment-related insurance to a third party, credit institutions and financial institutions aware of the assignment shall identify the beneficial owner at the time of the assignment to the natural or legal person or legal arrangement receiving for its own benefit the value of the policy assigned.

6. In the case of beneficiaries of trusts or of similar legal arrangements that are designated by particular characteristics or class, an obliged entity shall obtain sufficient information concerning the beneficiary to satisfy the obliged entity that it will be able to establish the identity of the beneficiary at the time of the payout or at the time of the exercise by the beneficiary of its vested rights.

#### Article LAW.AML.133: Obligated entities

In addition to the obliged entities that are covered under the Parties' respective laws implementing the FATF standards, the Parties shall ensure that persons storing, trading or acting as intermediaries in the trade of works of art [high-value goods] when this is carried out by free ports or free trade zones as well as persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses, where the value of the transaction or a series of linked transactions amounts to €10,000 or more are considered obliged entities under their Anti-Money Laundering and Counter-Terrorism frameworks.

#### Chapter eleven: Other provisions

#### Article LAW.OTHER.134: Notifications

1. When notifying each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound in accordance with Article FINPROV.10 [Entry into force], the Union and the United Kingdom shall make any of the notifications or declarations provided for in Article LAW.SURR.80 [Other grounds for non-execution of the arrest warrant](2), Article LAW.SURR.84 [Determination of the competent judicial authorities](3), Article LAW.SURR.84 [Determination of the competent judicial authorities](2) of this Agreement and may make any of the notifications or declarations provided for in Article LAW.SURR.78 [Scope] (4), Article LAW.SURR.81 [Political offence exception](2), Article LAW.SURR.82 [Nationality exception](2), Article LAW.SURR.85 [Recourse to the central authority](1), Article LAW.SURR.86 [Content and form of the arrest warrant](2), Article LAW.SURR.92 [Consent to surrender](4), Article LAW.SURR.96 [Time limits and procedures for the decision to execute the arrest warrant] (5), Article LAW.SURR.106 [Possible prosecution for other offences](1), Article LAW.SURR.107 [Surrender or subsequent extradition](1) of this Agreement. The declarations or notifications referred to in Article LAW.SURR.78 [Scope] (4), Article LAW.SURR.85 [Recourse to the central authority](1) and Article LAW.SURR.86 [Content and form of the arrest warrant](2) may be made at any time. The declarations or notifications referred to in Article LAW.SURR.84 [Determination of the competent judicial authorities](3) and Article LAW.SURR.54 [Transit] (2) may be modified, and those referred to in Article LAW.SURR.80 [Other grounds for non-execution of the arrest warrant](2), Article LAW.SURR.81 [Political offence exception] (2), Article LAW.SURR.82 [Nationality exception](2), Article LAW.SURR.85 [Recourse to the central authority] (1), Article LAW.SURR.92 [Consent to surrender] (4), Article LAW.SURR.96 [Time limits and procedures for the decision to execute the arrest warrant] (5), withdrawn, at all times. Where the Union makes declarations or notifications referred to in the first subparagraph, it shall indicate for which of its Member States the declaration applies.

2. When depositing its instrument of ratification referred to in Article FINPROV.10 [Entry into force], the United Kingdom shall notify the Union of the identity of the following authorities:

- (a) the United Kingdom Competent Authority referred to in [PLACEHOLDER]; and,
- (b) the independent public authorities as referred to in [PLACEHOLDER].
- (c) the independent administrative body as referred to in [PLACEHOLDER].

The United Kingdom shall notify without delay any changes thereto.

The Union shall publish information referred to in this paragraph in the Official Journal of the European Union.

#### Article LAW.OTHER.135: Review and evaluation

1. The Parties shall jointly review the implementation of:

- (a) Chapters Two, Six and Seven, no later than five years after the date of entry into force of this Agreement; and additionally if requested by either Party and jointly decided.
- (b) Chapters Three, Four and Five one year after the date of entry into force of this Agreement, at regular intervals thereafter, and additionally if requested by either Party and jointly decided.

2. The Parties shall decide in advance on the modalities of the review and shall communicate to each other the composition of their respective teams. The teams shall include persons with appropriate expertise with respect to the issues under review. Subject to applicable laws, any participants in a review shall be required to respect the confidentiality of the discussions and to have

appropriate security clearances. For the purposes of any review, the United Kingdom and the Union shall ensure access to relevant documentation, systems and personnel.

3. Without prejudice to paragraph 2, the review shall in particular address the practical implementation, interpretation and development of those Chapters and may also include issues such as the consequences of further development of the Union relating to the subject matter of those Chapters.

#### Article LAW.OTHER.136: Suspension and disapplication

1. The cooperation under this Title shall be conditional upon the United Kingdom's continued adherence to the European Convention on Human Rights and Protocols 1, 6 and 13 thereto, as well as upon the United Kingdom giving continued effect to these instruments under its domestic law.

2. Therefore, in the event that the United Kingdom abrogates the domestic law giving effect to the instruments referred to in paragraph 1 or makes amendments thereto to the effect of reducing the extent to which individuals can rely on them before domestic courts of the United Kingdom, this Title shall be suspended from the date such abrogation or amendment becomes effective. Suspension shall be terminated on the date the United Kingdom domestic law giving effect to the the said instruments again becomes effective.

3. Notwithstanding [Article on termination of the agreement], in the event that the United Kingdom denounces any of the instruments referred to in paragraph 1, this Title shall be disappplied from the date that such denunciation becomes effective.

4. Notwithstanding any suspension or disapplication of this Title, the Parties shall continue to apply the provisions of this Title to all [personal] data obtained before such suspension or disapplication and falling within the scope of this Title.

5. In case the Decision taken in accordance with Article 45 of the General Data Protection Regulation (EU) 2016/679 is either repealed or suspended by the Commission or declared invalid by the Court of Justice of the EU, the provisions of Chapters three and ten shall be suspended.

6. In case the Decision taken in accordance with Article 36 of Directive (EU) 2016/680 is either repealed or suspended by the Commission or declared invalid by the Court of Justice of the EU, all provisions of this Title shall be suspended.

7. In case of disapplication, the Parties shall reach agreement on the continued use and storage of the information that has already been communicated between them pursuant to Chapters Four and Five. If no agreement is reached, either of the two Parties is entitled to require that the information which it has communicated be destroyed or returned to the transferring Party.

8. [Placeholder: consequences of an evolution of the Prüm system on the application of the dedicated Chapter]

#### Article LAW.OTHER.137: Expenses

The Parties shall bear their own expenses, which arise in the course of implementation of this Title, unless otherwise stipulated in this Title.

## *TITLE II: FOREIGN POLICY, SECURITY AND DEFENCE*

[In a separate document]

### *TITLE III: THEMATIC COOPERATION*

#### Chapter one: Fight against irregular migration

##### Article IM.1: Cooperation

1. The Parties shall cooperate on tackling irregular migration from third countries towards the territories of the Parties, including its drivers and consequences, whilst at the same time recognising the need to protect the most vulnerable in accordance with international law.
2. The Parties may cooperate within Europol in accordance with the provisions of Chapter four [Cooperation with Europol] of Title I [Internal Security] of Part three [SECURITY].

##### Article IM.2: Dialogues

1. The Parties shall hold regular dialogues on shared objectives and cooperation in respect of third countries, including with and in partner third countries and in the relevant international fora.
2. The overall objective of the cooperation and dialogue between the Parties in respect of third countries shall be to prevent and combat irregular migration, migrant smuggling and trafficking in human beings in accordance with international law, supported by an improved knowledge of migration flows towards the territories of the Parties, while ensuring the protection of human rights, serving the interests of, and taking into account, the respective competence of the Parties and of the Member States.
3. With a view to achieving the overall objective of the cooperation between the Parties, cooperation in respect of third countries may include dialogue and activities in areas such as: maximising the development benefits of migration and addressing root causes of irregular migration and forced displacement, legal migration and mobility.

#### Chapter two: Health security

##### Article HS.1: Cooperation in health security

1. In case of a serious cross border threat to health, the Union may grant the United Kingdom, upon its written request, with ad hoc access to an Early Warning and Response System (EWRS) established within the Union, in respect of that particular threat, for the purposes of alerting, assessing public health risks and determining the measures that may be required to protect public health.
2. The United Kingdom national competent authorities shall notify an alert in the EWRS without delay and in any event no later than 24 hours after they first became aware of the threat, where the emergence or development of a serious cross-border threat to health fulfils the following criteria:
  - (a) it is unusual or unexpected for the given place and time, or it causes or may cause significant morbidity or mortality in humans, or it grows rapidly or may grow rapidly in scale, or it exceeds or may exceed national response capacity; and
  - (b) it affects or may affect more than one State; and

(c) it requires or may require a coordinated response at Union and United Kingdom level.

3. When notifying an alert, the United Kingdom national competent authorities shall promptly communicate through the EWRS any available relevant information in their possession that may be useful for coordinating the response such as:

- (a) the type and origin of the agent;
- (b) the date and place of the incident or outbreak;
- (c) means of transmission or dissemination;
- (d) toxicological data;
- (e) detection and confirmation methods;
- (f) public health risks;
- (g) public health measures implemented or intended to be taken at national level;
- (h) measures other than public health measures;
- (i) personal data necessary for the purpose of contact tracing;
- (j) any other information relevant to the serious cross-border threat to health in question.

4. Where, following an alert notification, the United Kingdom wishes to communicate available relevant information for coordination purposes, it shall use the ad hoc functionality of the EWRS to post a 'comment' in reply to the initial notification message.

5. The Union and the United Kingdom shall cooperate in international fora on prevention, detection, preparation for and response to established and emerging threats to health security in a consistent manner.

6. The Partnership Council may amend this Article.

### Chapter three: Cyber-security

#### Article CYB.1: Dialogue on cyber issues

The Parties shall establish a regular dialogue in order to exchange information about relevant policy developments, including on international security, security of emerging technologies, internet governance, cybersecurity, cyber defence and cybercrime.

#### Article CYB.2: Cooperation on cyber issues

1. The Parties shall cooperate in the field of cyber issues by sharing best practices and through cooperative practical actions aimed at promoting an open, free, stable and secure cyberspace based on the application of existing international law, and other relevant norms for responsible State behaviour and regional cyber confidence building measures.

2. The Parties shall cooperate to promote effective global practices on cybersecurity in relevant international bodies and fora.
3. The Parties underline their support for the Budapest Convention on Cybercrime that provides a solid basis for developing national legislation and international cooperation addressing cybercrime.
4. The Parties shall cooperate to strengthen global cyber resilience and to enhance the ability of third countries to effectively fight cybercrime.
5. The Parties commit to strengthen the multi-stakeholder internet governance and to cooperate to that end, as well as to strongly promote and protect human rights online.
6. The Parties shall cooperate on diplomatic responses to malicious cyber activities, by sharing best practices and through cooperative practical actions. The Parties shall establish coordination and communication procedures, as well as conduct exercises to that end.

#### Article CYB.3: Cooperation with the Computer Emergency Response Team – European Union

The Computer Emergency Response Team – European Union (CERT-EU) and the relevant national CERT of the United Kingdom, subject to prior approval by the Steering Group of CERT-EU, shall cooperate on a voluntary, timely and reciprocal basis to exchange information on tools and methods, such as techniques, tactics and procedures, and best practices and on general threats and vulnerabilities.

#### Article CYB.4: Participation in specific activities of the Cooperation Group established pursuant to Directive (EU) 2016/1148

With a view to ensuring the autonomy of the Union decision making process, the relevant national competent authority of the United Kingdom may only participate, upon invitation by the Chair of the Cooperation Group established in consultation with the Commission, in the following activities of the Cooperation Group:

- (a) exchanging best practices in building capacity to ensure the security of network and information systems;
  - (b) exchange of information with regard to exercises relating to the security of network and information systems;
  - (c) exchanging information, experiences and best practices on risks and incidents;
  - (d) exchanging information and best practices on awareness-raising, education programmes and training;
  - (e) exchanging information and best practices on research and development relating to the security of network and information systems.
2. Any exchange of information, experiences and best practices between the Cooperation Group and the relevant national competent authority of the United Kingdom shall be voluntary and, where appropriate, reciprocal.

Article CYB.5: Cooperation with the EU Agency for Cybersecurity (ENISA)

1. With a view to ensuring the autonomy of the union decision making process, the United Kingdom may only participate, upon invitation by the Management Board, in the following activities carried out by the EU Cybersecurity Agency (ENISA):
  - (a) capacity-building;
  - (b) knowledge and information;
  - (c) awareness-raising & education;
2. The conditions of the participation of the United Kingdom in ENISA's activities referred to in paragraph 1, including an adequate financial contribution, shall be set out in working arrangements adopted by the Management Board subject to the prior approval of the Commission.
3. The exchange of information, experiences and best practices between the ENISA and the United Kingdom shall be voluntary and, where appropriate, reciprocal.



PART FOUR: PARTICIPATION IN UNION PROGRAMMES, SOUND FINANCIAL MANAGEMENT AND FINANCIAL PROVISIONS

Chapter One: Participation of the United Kingdom in Union programmes

Article UNPRO.1.1: Scope

This Chapter shall apply to the participation of the United Kingdom in Union programmes [and activities] open to its participation.

This Chapter shall not apply to the participation of the United Kingdom in cohesion programmes supporting cross-border cooperation with third countries, which takes place on the basis of the acts of one or more Union institutions applicable to those programmes.

Article UNPRO.1.2: Definitions

For the purpose of this Chapter, the following definitions apply:

- (a) "United Kingdom's entity" means any type of entity (natural person, legal person or another entity) which may participate in activities of a Union programme [or activity] in accordance with the basic act and which reside or is established in the United Kingdom;
- (b) "basic act" means an act of one or more Union institutions establishing a programme, which provides a legal basis for an action and for the implementation of the corresponding expenditure entered in the Union budget or of the budgetary guarantee backed by the Union budget, including any amendment thereto and including any relevant acts of a Union institution supplementing or implementing it, or an act of one or more Union institutions establishing an activity financed from the Union budget other than programmes."
- (c) "Union award procedure" means a procedure for award of Union funding launched by the Union or by persons or entities entrusted with the implementation of Union funds.

*Section 1: General Conditions for participation in Union programmes*

Article UNPRO.1.3: Establishment of the participation

1. The United Kingdom shall participate in and contribute to the Union programmes or part of programmes [and activities] listed in Protocol I.
2. Protocol I shall:
  - a) identify the Union programmes [and activities], or exceptionally parts thereof, in which the United Kingdom shall participate;
  - b) lay down the duration of the participation, which shall refer to the period of time during which the United Kingdom and United Kingdom entities may apply for Union funding or may be entrusted with implementation of Union funds;
  - c) lay down specific conditions for the participation of the United Kingdom and United Kingdom entities, including conditions for participation in legal structures created for the purposes of implementing the Union programmes. These conditions shall comply with the conditions laid

down in this Agreement and in the basic acts and acts of one or more Union institutions establishing such legal structures.

d) where applicable, lay down the amount of United Kingdom's contribution to a Union programme implemented through a financial instrument or a budgetary guarantee.

3. Protocol I may be amended by the Specialised Committee on Participation in Union Programmes.

#### Article UNPRO.1.4: Compliance with Programme Rules

The United Kingdom shall participate in the Union programmes or part of programmes [and activities] listed in Protocol I under the terms and conditions established in this Agreement, the basic acts and any other rule pertaining to the implementation of Union programmes [and activities].

The following conditions shall apply:

- a) The eligibility of the United Kingdom's entities and any other eligibility condition related to the United Kingdom, in particular to the origin, place of activity or nationality, shall be governed by the provisions of the basic acts and any other rule pertaining to the implementation of Union programmes [and activities];
- b) The terms and conditions applicable to the submission, assessment and selection of applications and for implementation of the actions by eligible entities of the United Kingdom shall be, as far as possible, equivalent to those applicable to eligible entities of the Member States.

#### Article UNPRO.1.5: Conditions for participation related to specific parts of this Agreement

1. The United Kingdom's participation in a Union programme, [or an activity], or a part thereof as referred to in Article UNPRO.1.1 [Scope] shall be conditional upon:
  - a) as regards participation implying mobility of persons, in particular students, researchers, trainees or volunteers, between the Union and the United Kingdom and within the United Kingdom, the United Kingdom ensuring that:
    - i) there is no discrimination between Member States in relation to mobility;
    - ii) the conditions for such persons for moving to the United Kingdom and within the United Kingdom in the framework of the implementation of the programmes do not entail unjustified administrative or financial burden; and
  - b) the conditions for persons, in particular students, researchers, trainees or volunteers, for accessing services in the United Kingdom that are directly related to the implementation of the programmes being the same as for United Kingdom citizens. This concerns in particular any fees related to participation in an activity financed by the programme.

- c) as regards participation involving exchange or access to security-related sensitive information, the United Kingdom shall ensure that only Member States, nationals of Member States or natural or legal persons residing or established in a Member State may have access to the information and only in so far as it complies with the specific requirements laid down in Part III [Security] of this Agreement;
  - d) *[Possible conditions related to Intellectual property]*
  - e) *[Possible conditions related to Mobility of services]*
  - f) as regards participation in Union programmes [and activities], or parts thereof, directly aiming at improving the competitiveness, *[United Kingdom complying with condition in accordance with the content of the LPF section]*.
2. As regards participation implying mobility of persons, such as students, researchers, trainees or volunteers, between the Union and the United Kingdom and within the Union, the Union shall ensure that:
- a) the conditions for United Kingdom citizens for moving to the Union and within the Union in the framework of the implementation of the programmes do not entail unjustified administrative or financial burden; and
  - b) the conditions for United Kingdom citizens for accessing services in the Union that are directly related to the implementation of the programmes are the same as for Union citizens. This concerns in particular any fees related to participation in an activity financed by the programme.

Article UNPRO.1.6: Participation of United Kingdom in the governance of programmes

1. The United Kingdom's representatives or experts designated by the United Kingdom shall be allowed to take part, as observers for the points which concern the United Kingdom, in the committees, expert groups meeting or other similar meetings where representatives or experts or experts designated by Member States take part that are responsible for assisting the European Commission in the implementation and management of the programmes, the part of the programmes or the activities to which the United Kingdom participates in accordance with Article UNPRO.1.1 [Scope] or are established by the European Commission in respect of the implementation of the Union law in relation to these programmes, part of the programmes or activities. These committees shall meet without the presence of the representatives of the United Kingdom at the time of voting.
2. Subject to the conditions of paragraph 1, participation of the United Kingdom's representatives referred to in paragraph 1, or other meetings related to the implementation of programmes shall be governed by the same rules and procedures as those applicable to representatives of the Member States of the European Union, including with regards to receipt of information and documentation in relation to a point that concerns the United Kingdom, reimbursement of travel and subsistence costs, etc...

3. If Protocol I provides for the participation of United Kingdom entities in direct actions of the Joint Research Centre, representatives of the United Kingdom shall participate as observers in the Board of Governors of the Joint Research Centre, without voting right. Subject to that condition, participation of representatives of the United Kingdom shall be governed by the same rules and procedures as those applicable to representatives from Member States of the European Union, including procedures for receipt of information and documentation in relation to a point that concerns the United Kingdom.

*Section 2: Rules for financing the participation in programmes*

Article UNPRO.2.1: Financial conditions

1. Any participation of the United Kingdom or United Kingdom entities in Union programmes or parts of programmes and activities shall be subject to the United Kingdom contributing financially to the budget of the European Union.
2. The financial contribution shall take the form of the sum of:
  - a) a Participation Fee, and
  - b) an operational Contribution.
3. The financial contribution shall take the form of an annual payment made in one or more instalments.
4. The Participation Fee shall be a [X%] of the [annual] operational Contribution and shall not be subject to [retrospective] adjustments.
5. The operational contribution shall cover operational and support expenditure and be additional both in commitment and payment appropriations to the amounts entered in the Union budget definitively adopted for the programme, part of the programme [or activity concerned].
6. The operational contribution shall be based on a contribution key defined as the ratio between the Gross Domestic Product of the United Kingdom and the Gross Domestic Product of the Member States of the Union. The Gross Domestic Products to be applied shall be the latest available from the Statistical Office of the European Communities (Eurostat), on 1 January of the year the annual payment is made in.
7. The operational contribution shall be based on the application of the contribution key to the initial commitment appropriations entered in the Union budget definitively adopted for the applicable year for financing the programme (including the support expenditure of the programme), the part of the programme [or the activity].
8. The operational contribution for year n may be adjusted upwards or downwards retrospectively [once] in a following year when the relevant budgetary commitments, excluding assigned revenues, have been fully implemented as legal commitments or decommitted. [Such an

adjustment shall apply if the amount of legal commitments actually entered into, excluding assigned revenues, deviates by more than [X] % of the corresponding initial commitment appropriations].

9. Upon request of the United Kingdom, the European Commission shall provide to the United Kingdom all financial information that may reasonably be requested by the United Kingdom in relation with its financial participation.
10. All contributions of the United Kingdom or payments from the Union and the calculation of amounts due or to be received shall be made in Euros.
11. The detailed provisions for the implementation of this Article are set out in ANNEX UNPRO-1.

Article UNPRO.2.2: Programmes where an automatic rebalancing mechanism may apply

1. Programmes requiring a correction of the United Kingdom contribution if the financial benefit received by the United Kingdom or United Kingdom entities exceeds the operational contribution paid by the United Kingdom to the Union budget shall be identified in the Protocol I as programmes where Article UNPRO.2.2 of the Agreement applies.
2. For these programmes, in case the financial benefit received by the United Kingdom or United Kingdom entities exceeds the [annual] operational contribution paid by the United Kingdom, excluding support expenditure, the United Kingdom shall pay an additional contribution to the Union budget, on the basis of the implementation of the programme.
3. The additional contribution shall be applied the following way:
  - a) for each programme covered by this article, the Union shall establish a “rebalancing mechanism for United Kingdom participation” calculated as the difference between the initial amounts of the legal commitments actually entered into with the United Kingdom or United Kingdom entities during the calendar year in question and the [corresponding] operational contribution paid by the United Kingdom, excluding support expenditure, covering the same period;
  - b) if a legal commitment is signed with a coordinator of a consortium, the amounts used to establish the initial amounts of the legal commitments referred to under point (a) shall be respectively the cumulative initial amounts allocated in the legal commitments to members of a consortium that are United Kingdom entities;
4. The additional contribution referred to in paragraph 2 shall be due only where the difference between the amount of the legal commitments actually entered into by the United Kingdom or by United Kingdom’s entities during the calendar year in question and the amount of the corresponding operational contribution, excluding support expenditure, is more than [X] percentage points of the operational contribution, excluding support expenditure.

Article UNPRO.2.3: Financing in relation to programmes implemented through financial instruments or budgetary guarantees

1. By derogation from Article UNPRO.2.1 [Financial conditions], the contribution of the United Kingdom to programmes implemented through financial instruments or budgetary guarantees under the Union budget implemented under Title X of the Financial Regulation shall be made in the form of cash. The amount contributed in cash shall increase the EU budgetary guarantee or the financial envelope of the financial instrument.

2. When the United Kingdom participates in a programme referred to in paragraph 1 that is implemented by the European Investment Bank Group, in case the European Investment Bank Group needs to cover losses that are not covered by the guarantee provided by the budget, the United Kingdom shall pay to the European Investment Bank Group a percentage of these losses equal to the contribution key referred to in Article UNPRO.2.1 [financial conditions] paragraph 6.

*Section 3: Suspension and termination of the participation in programmes*

Article UNPRO.3.1: Suspension of the participation of the United Kingdom in a Union programme by the Union

1. The Union may unilaterally suspend the application of Protocol I, in relation to one or more Union programmes in accordance with this Article, if any of the conditions referred to in Article UNPRO.1.5(1) [Conditions for participation related to specific parts of this Agreement] is not fulfilled with or if the United Kingdom does not pay its financial contribution in accordance with this Agreement.

2. The Union shall notify the Specialised Committee on Participation in Union Programmes of its intention to suspend the participation of the United Kingdom in the programmes. The Union shall identify the scope of the suspension and provide due justification. The suspension shall take effect [10] days following the date of notification by the Union. The date on which the suspension takes effect shall constitute the reference date for the purposes of this Article.

3. As of the reference date the United Kingdom shall not be treated as a country participating in the Union programme concerned by the suspension and in particular, the United Kingdom or United Kingdom entities shall no longer be eligible under the conditions laid down in Article UNPRO.1.4 [Compliance with Programme Rules] and Protocol I, with regard to Union award procedures which have not been completed yet on that date. An award procedure shall be considered completed when legal commitments have been entered into as a result of such a procedure.

4. The suspension shall not affect legal commitments entered into before the reference date. This agreement shall continue to apply to such legal commitments.

5. *[There should be a contradictory procedure whereby the UK could demonstrate compliance. This shall be followed by a notification by the Union to the Committee that the suspension is lifted and as of which date after the notification the lifting takes effect.]*

6. The United Kingdom shall be treated again as a country participating in the Union programme concerned, and in particular United Kingdom and United Kingdom entities shall be again eligible under the conditions laid down in Article UNPRO.1.4 [Compliance with Programme Rules] and Protocol I, with regard to Union award procedures under that Union programme launched after the date on which the lifting of the suspension takes effect, or before that date, if the deadline for submission of applications has not expired. 7. In case of suspension of Protocol I, or part thereof in relation to a programme, the financial contribution due during the period of suspension shall be established as follows:

- a) the Participation Fee shall remain due and its amount shall not be affected by the recalculation referred to in point (b).
- b) the Union shall recalculate the operational contribution taking due account of the principle of proportionality and in particular the amount of legal commitments entered into in the year in question.

Article UNPRO.3.2 – Termination of the participation of the United Kingdom in a Union programme by the Union

1. The Union may unilaterally terminate the application of Protocol I, in relation to one or more Union programmes in accordance with this Article, where suspension under Article UNPRO.3.1.[Suspension of the participation of the United Kingdom] has not been lifted for more than 2 years as of the reference date provided in Article UNPRO.3.1.(2).
2. The Union shall notify the Specialised Committee on Participation in Union Programmes of its intention to terminate the participation of the United Kingdom in the programmes. The Union shall identify the scope of the termination and provide due justification. The termination shall take effect [60] days following the date of notification by the Union. The date on which the termination takes effect shall constitute the reference date for the purposes of this Article.
3. As of the reference date the United Kingdom shall not be treated as a country participating in the Union programme concerned by the termination, and in particular the United Kingdom or United Kingdom entities shall no longer be eligible under the conditions laid down in Article UNPRO.1.4 [Compliance with Programme Rules] and in Protocol I, with regard to Union award procedures which have not been completed yet on that date. An award procedure shall be considered completed when legal commitments have been entered into as a result of such a procedure.
4. The termination shall not affect legal commitments entered into before the reference date referred to in Article UNPRO.3.1(2) [Suspension of the participation of the United Kingdom]. This agreement shall continue to apply to such legal commitments.
5. Where the application of Protocol I, or part thereof, is terminated:
  - a) the Participation Fee shall no longer be due as from the beginning of the subsequent calendar year.
  - b) the operational contribution covering supporting expenditure related to legal commitments already entered into shall be due until completion of such legal commitments.

Article UNPRO.3.3: Termination of the participation in a programme in the case of substantial modification of Union programme

1. If a basic act of a Union Programme or activity referred to in Protocol I is amended to an extent that the conditions for participation of the United Kingdom or of United Kingdom persons or entities in that programme are substantially modified, the United Kingdom may terminate its participation therein.

2. To this effect, the United Kingdom shall notify its intention to terminate Protocol I in relation to the Union programme concerned, to the Specialised Committee on Participation in Union Programmes at the latest [one] month after the publication of the amendment in the Official Journal of the European Union. The United Kingdom shall explain the reasons for which the United Kingdom considers the amendment to substantially alter the conditions of participation.
3. The termination shall take effect [60] days following the date of notification by the United Kingdom. The date on which the termination takes effect shall constitute the reference date for the purposes of this Article.
4. As of the reference date the United Kingdom shall not be treated as a country participating in the Union programme concerned by the termination, and in particular the United Kingdom or United Kingdom entities shall no longer be eligible under the conditions laid down in Article UNPRO.1.4 [Compliance with Programme Rules] and in Protocol I, with regard to Union award procedures which have not been completed yet on that date. An award procedure shall be considered completed when legal commitments have been entered into as a result of such a procedure.
5. The termination shall not affect legal commitments entered into before the reference date. This agreement shall continue to apply to such legal commitments.
6. In case of termination under this Article
  - a) the Participation Fee shall no longer be due as from the beginning of the subsequent calendar year.
  - b) the operational contribution covering supporting expenditure related to legal commitments already entered into shall be due until completion of such legal commitments.

## Chapter two: Sound financial management

### *Section 1: Protection of financial interests and recovery*

#### Article UNPRO.4.1: Reviews and audits

1. The Union shall have the right to conduct in accordance with the applicable acts of one or more Union institutions and as provided in relevant grant agreements and/or contracts, technical, scientific, financial, or other types of reviews and audits on the premises of any natural person residing in or legal entity established in the United Kingdom and receiving Union funding, as well as any third party involved in the implementation of Union funding residing or established in the United Kingdom. Such review and audits may be carried out by the agents of the institutions and bodies of the Union, in particular of the European Commission and the European Court of Auditors, or by other persons mandated by the European Commission.
2. The agents of the institutions and bodies of the Union, in particular of the European Commission and the European Court of Auditors, and other persons mandated by the European Commission, shall have appropriate access to sites, works and documents (both electronic and paper versions)



and to all the information required in order to carry out such audits, including the right of obtaining a physical/electronic copy of, and obtain extracts from, any document or the contents of any data medium held by audited person.

3. The United Kingdom shall not prevent or raise any particular obstacle to the right of entrance in the United Kingdom and access to the premises of the persons referred to in paragraph 2 on the grounds of the exercise of their duties referred to in this article.
4. The reviews and audits may be carried out also after termination or expiry of this Agreement and/or Protocol I, on the terms laid down in the applicable acts of one or more Union institutions and as provided in relevant grant agreements and/or contracts in relation to any legal commitment implementing the Union budget entered into by the Union before the date of the entry into force of the termination of this Agreement.

#### Article UNPRO.4.2: Fight against irregularities, fraud and other criminal offences affecting the financial interests of the Union

1. The European Commission, the European Anti-Fraud Office (OLAF), and the European Public Prosecutor Office may carry out investigations, including on-the-spot checks and inspections, on the territory of the United Kingdom, in accordance with the terms and conditions established by applicable acts of one or more Union institutions.
2. The competent United Kingdom authorities shall inform the European Commission or other entities referred to in paragraph 1 within reasonable time of any fact or suspicion which has come to their notice relating to an irregularity, fraud or other criminal offence affecting the financial interests of the Union.
3. On-the-spot checks and inspections shall be prepared and conducted by the European Commission or the other entities referred to in paragraph 1 in close collaboration with the competent United Kingdom authority designated by the United Kingdom government. The designated authority shall be notified a reasonable time in advance of the object, purpose and legal basis of the checks and inspections, so that it can provide assistance. To that end, the officials of the competent United Kingdom authorities may participate in the on-the-spot checks and inspections.
4. Upon request by the United Kingdom authorities, the on-the-spot checks and inspections may be carried out jointly with the European Commission or the other entities referred to in paragraph 1.
5. Where the person or entity resists an on-the-spot check or inspection, the United Kingdom authorities, acting in accordance with national rules and regulations, shall assist the European Commission or the other entities referred to in paragraph 1, to allow them to fulfil their duty in carrying out an on-the-spot check or inspection.
6. The European Commission or the other entities referred to in paragraph 1 shall inform the United Kingdom authorities of the result of such checks and inspections. In particular the European Commission or the other entities referred to in paragraph 1 shall report as soon as possible to the competent United Kingdom authority any fact or suspicion relating to an irregularity which has come to their notice in the course of the on-the-spot check or inspection.
7. Without prejudice to application of United Kingdom criminal law, the European Commission may impose administrative measures and penalties on legal or natural persons participating in the implementation of a programme in accordance with Union legislation.

#### Article UNPRO.4.3: Amendments to Articles 4.1 and 4.2

The Specialised Committee on Participation in Union Programmes may amend Articles UNPRO.4.1 and 4.2, in particular to take account of changes of acts of one or more Union institutions.

#### Article UNPRO.4.4: Recovery and Enforcement

1. Decisions adopted by the European Commission imposing a pecuniary obligation on legal or natural persons other than States in relation to any claims stemming from Union programmes, activities, actions or projects shall be enforceable in the United Kingdom. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of the United Kingdom shall designate for this purpose and shall make known to the Commission and the Court of Justice of the European Union. In accordance with Article UNPRO.4.1, the European Commission shall be entitled to notify such enforceable decisions directly to persons residing and legal entities established in the United Kingdom. Enforcement shall take place in accordance with the United Kingdom law and rules of procedure.
2. Judgments and orders of the Court of Justice of the European Union delivered in application of an arbitration clause contained in a contract or agreement in relation to Union programmes, activities, actions or projects shall be enforceable in the United Kingdom in the same manner as European Commission decisions referred to in paragraph 1.
3. The Court of Justice of the European Union shall have jurisdiction to review the legality of the decision of the Commission referred to in paragraph 1 and to suspend its enforcement. However, the Courts of the United Kingdom shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

#### *Section 2: Other rules for the implementation of the programmes*

#### Article UNPRO.5.1: Communication and exchange of information

The Union institutions and bodies involved in the implementation of Union programmes, or in controls over such programmes, shall be entitled to communicate directly, including through electronic exchange systems, with any natural person residing in or legal entity established in the United Kingdom and receiving Union funding, as well as any third party involved in the implementation of Union funding residing or established in the United Kingdom. Such persons, entities and parties may submit directly to the Union institutions and bodies all relevant information and documentation which they are required to submit on the basis of the Union legislation applicable to the Union programme and of the contracts or grant agreements concluded to implement that programme.

#### Article UNPRO.5.2: Reporting and evaluation

The specific terms and conditions regarding reporting and evaluation procedures shall be determined on the basis of the criteria established in the Union basic acts governing the concerned programmes.

## PART FIVE: INSTITUTIONAL AND HORIZONTAL PROVISIONS

### TITLE I: INSTITUTIONAL FRAMEWORK

#### Article INST.1: Partnership Council

1. A Partnership Council is hereby established. It shall comprise representatives of the Union and of the United Kingdom. The Partnership Council may meet in different configurations depending on the matters under discussion.
2. The Partnership Council shall be co-chaired by a Member of the European Commission and a representative of the Government of the United Kingdom at Ministerial level. It shall meet at the request of the Union or the United Kingdom, and in any event at least once a year, and shall set its meeting schedule and its agenda by mutual consent.
3. The Partnership Council shall supervise and facilitate the implementation and application of this Agreement and any supplementing agreement. Each Party may refer to the Partnership Council any issue relating to the implementation, application and interpretation of this Agreement or of any supplementing agreement.
4. The Partnership Council shall have the power to:
  - (a) adopt decisions in respect of all matters for which this Agreement or any supplementing agreement so provides;
  - (b) make recommendations to the Parties regarding the implementation and application of this Agreement or any supplementing agreement
  - (c) adopt, by decision, amendments to this Agreement or to a supplementing agreement in the cases provided for in this Agreement or the supplementing agreement;
  - (d) consider any matter of interest relating to an area covered by this Agreement or any supplementing agreement;
  - (e) delegate, by decision, certain of its powers to a Specialised Committee, except those powers and responsibilities referred to in [Article INST-2(2) [Specialised Committees];
  - (f) hold dialogues and exchanges in areas of shared interest, with the view to identifying opportunities to cooperate and to share best practices and expertise.
5. The work of the Partnership Council shall be governed by the rules of procedure set out in ANNEX INST-1 [Rules of Procedure of the Partnership Council] to this Agreement. The Partnership Council may amend that Annex.

#### Article INST.2: Specialised Committees

1. Specialised Committees shall assist the Partnership Council in the performance of its tasks and shall, in particular, prepare the work of the Partnership Council and carry out any task assigned to them by the latter. A Specialised Committee may adopt decisions in respect of all matters for which this Agreement or any supplementing agreement so provides or for which the Partnership Council has delegated its powers to the Specialised Committee in accordance with Article INST.1(4)(e) [Partnership Council].
2. The following Specialised Committees are hereby established:
  - (a) The Specialised Committee on the Level Playing Field and Sustainability
  - (b) The Specialised Committee on Law Enforcement and Judicial Cooperation

- (c) The Specialised Committee on Fisheries
- (d) The Specialised Committee on Sanitary and Phytosanitary Measures.
- (e) The Specialised Committee on Technical Barriers to Trade
- (f) The Specialised Committee on Customs Cooperation
- (g) The Specialised Committee on Administrative Cooperation in VAT and recovery of taxes and duties
- (h) The Specialised Committee on Aviation Safety
- (i) The Specialised Committee on Air Transport
- (j) The Specialised Committee on Road Transport
- (k) The Specialised Committee on Regulatory Cooperation
- (l) The Specialised Committee on Intellectual Property
- (m) The Specialised Committee on Public Procurement
- (n) The Specialised Committee on Capital Movements
- (o) The Specialised Committee on Participation in Union Programmes

2. The Partnership Council may, by decision, establish specialised committees other than those referred to in paragraph 1, dissolve such any specialised committee, or change the tasks assigned to it.

3. The specialised committees shall comprise representatives of each Party. The parties shall ensure that their respective representatives on the specialised committees have the appropriate expertise with respect to the issues under discussion.

4. The specialised committees shall be co-chaired by a representative of each Party. Unless otherwise provided in this Agreement, or unless the co-chairs decide otherwise, the specialised committees shall meet at least once a year.

5. The specialised committees shall set their meeting schedule and agenda by mutual consent.

6. A specialised Committee referred to in paragraph 1 shall have the following tasks:

(a) [placeholder]

(b) To act as the forum for consultations in accordance with Article INST.13(4) [Consultations in the Partnership Council] with respect to obligations arising under the Chapter or Title [for which they are responsible], except in the cases referred to in Article INST.12(3) [Consultations].

7. The work of the specialised committees shall be governed by the rules of procedure set out in ANNEX INST-2 [Rules of Procedure of the Specialised Committees] to this Agreement. The Partnership Council may amend that Annex.

### Article INST.3: Joint Working Groups

[PLACEHOLDER]

### Article INST.4: Decisions and recommendations

1. The decisions adopted by the Partnership Council, or, as the case may be, a specialised committee, shall be binding on the Parties. Recommendations shall have no binding force.
2. The Partnership Council or, as the case may be, a specialised committee, shall adopt decisions and make recommendations by mutual consent.

### Article INST.5: Parliamentary Partnership Assembly

1. A Parliamentary Partnership Assembly is hereby established. It shall be a forum for Members of the European Parliament and of the Parliament of the United Kingdom to meet and exchange views. It shall meet at intervals which it shall itself determine.
2. The Parliamentary Partnership Assembly shall consist of Members of the European Parliament, on the one hand, and of Members of the Parliament of the United Kingdom, on the other.
3. The Parliamentary Partnership Assembly shall establish its own rules of procedure.
4. The Parliamentary Partnership Assembly shall be chaired in turn by a representative of the European Parliament and a representative of the Parliament of the United Kingdom respectively, in accordance with the provisions to be laid down in its rules of procedure.
5. The Parliamentary Partnership Assembly may request relevant information regarding the implementation of this Agreement from the Partnership Council, which shall then supply the Assembly with the requested information.
6. The Parliamentary Partnership Assembly shall be informed of the decisions and recommendations of the Partnership Council.
7. The Parliamentary Partnership Assembly may make recommendations to the Partnership Council.
8. The Parliamentary Partnership Assembly may establish sub-committees.

### Article INST.6: Participation of civil society

The Parties shall consult civil society on the implementation of this Agreement, in particular through the interaction with the domestic advisory groups and the Civil Society Forum referred to in Articles INST.7 [Domestic advisory groups] and INST.8 [Civil Society Forum].

### Article INST.7: Domestic advisory groups

1. Each Party shall create a new or designate an existing domestic advisory group within a year from the entry into force of this Agreement. The domestic advisory group shall advise the Party concerned on issues covered by this Agreement. It shall comprise a balanced representation of independent civil society organisations including non-governmental organisations, business and employers' organisations as well as trade unions active on economic, sustainable development, social, human rights, environmental and other matters. The domestic advisory group may be

convened in different configurations to discuss the implementation of different Parts, Titles and provisions of this Agreement or any supplementing agreement.

2. Each Party shall consider views or recommendations submitted by its domestic advisory group on the implementation of this Agreement and its supplementing agreements. Representatives of each Party shall meet with their respective domestic advisory group at least once a year.

3. In order to promote public awareness of the domestic advisory groups, each Party shall publish the list of organisations participating in its domestic advisory group as well as the contact point for that group.

4. The Parties shall promote the interaction between their respective domestic advisory groups.

#### Article INST.8: Civil Society Forum

1. The Parties shall facilitate the organisation of a Civil Society Forum to conduct a dialogue on the implementation of this Agreement and its supplementing agreements. The Partnership Council shall adopt operational guidelines for the conduct of the Forum.

2. The Civil Society Forum shall meet in conjunction with the meeting of the Partnership Council. The Parties may also facilitate participation in the Civil Society Forum by virtual means.

3. The Civil Society Forum shall be open for the participation of independent civil society organisations established in the territories of the Parties, including members of the domestic advisory groups referred to in Article INST.7 [Domestic advisory groups]. Each Party shall promote a balanced representation, including, non-governmental organisations, business and employers' organisations and trade unions active on economic, sustainable development, social, human rights, environmental and other matters.

### *TITLE II: DISPUTE SETTLEMENT*

#### Chapter one: General provisions

#### Article INST.9: Scope

1. This Title shall apply, unless otherwise provided in this Agreement or in the supplementing agreement, with respect to disputes between the Parties concerning the interpretation and application of this Agreement or any supplementing agreement.

2. This Title, with the exception of Article INST.10 [Exclusivity], shall not apply with respect to obligations arising under:

(a) Title II [Basis for cooperation] of Part One of this Agreement;

(b) [PLACEHOLDER].

3. Disputes with respect to obligations arising from the provisions referred to in paragraph 2 may be discussed, with a view to resolving them, by the Partnership Council.

#### Article INST.10: Exclusivity

The Parties undertake not to submit a dispute between them regarding the interpretation or application of provisions of this Agreement or of any supplementing agreement to a method of settlement other than those provided for in this Agreement.

Article INST.11: Choice of forum in case of a substantially equivalent obligation under another international agreement

1. If a dispute arises regarding a measure in alleged breach of an obligation under [Titles/sections XX of Part(s) XX of this Agreement] and of a substantially equivalent obligation under another international agreement to which both Parties are parties, including the WTO Agreement, the Party seeking redress shall select the forum in which to settle the dispute.
2. Once a Party has selected the forum and initiated dispute settlement procedures either under this Title or under another international agreement, that Party shall not initiate such procedures under the other international agreement with respect to the particular measure referred to in paragraph 1, unless the forum selected first fails to make findings for procedural or jurisdictional reasons.
3. For the purposes of this Article:
  - (a) dispute settlement procedures under this Title are deemed to be initiated by a Party's request for the establishment of an arbitration tribunal under Article INST.15 [Arbitration procedures];
  - (b) dispute settlement procedures under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO;
  - (c) dispute settlement procedures under any other agreement are deemed to be initiated in accordance with the relevant provisions of that agreement.
4. Without prejudice to paragraph 2, nothing in this Agreement shall preclude a Party from suspending obligations authorised by the Dispute Settlement Body of the WTO or authorised under the dispute settlement procedures of another international agreement to which the disputing Parties are party. The WTO Agreement or any other international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under this Section.

Chapter two: Procedure

Article INST.12: Consultations

1. If a Party considers that the other Party has breached an obligation under this Agreement or any supplementing agreement, the Parties shall endeavour to resolve the matter by entering into consultations in good faith, with the aim of reaching a mutually agreed solution.
2. Consultations shall be held in accordance with Article INST.13 [Consultations in the framework of the Partnership Council], except in the cases referred to in paragraph 3.
3. Consultations shall be held in accordance with Article INST.14 [Accelerated consultations] for any dispute concerning:
  - (a) [PLACEHOLDER]
4. Consultations, and in particular all information designated as confidential and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.

#### Article INST.13: Consultations in the framework of the Partnership Council

1. If a Party (“the complaining Party”) considers that the other Party has breached an obligation under this Agreement or any supplementing agreement, it may bring the matter before the Partnership Council by means of a written notification delivered to the other Party (“the respondent Party”) and to the Partnership Council. It shall specify in its written notification the facts and circumstances regarding the alleged breach and the provisions that it considers applicable. The Partnership Council shall put the item on the agenda with a view to resolving the dispute.
2. Each Party shall provide all relevant information to the Partnership Council to allow a complete examination of the matter.
3. The Partnership Council may resolve the dispute by a decision.
4. Where this Agreement, a supplementary agreement, or a decision of the Partnership Council in accordance with Article INST.1(4)(b) [Partnership Council] so provides, the matter shall be brought before the relevant Specialised Committee instead of before the Partnership Council. The Specialised Committee or the Partnership Council may at any time decide to refer the matter to the Partnership Council.

#### Article INST.14: Accelerated consultations

1. If a Party (the “complaining Party”) considers that the other Party has breached an obligation under this Agreement or any supplementing agreement, it may seek accelerated consultations by means of a written request delivered to the other Party (the “respondent Party”). The complaining Party shall specify in its written request the reasons for the request, including identification of the measures at issue and an indication of the legal base for the complaint.
2. The respondent Party shall reply to the request promptly, but no later than 10 days after the date of its delivery. Consultations shall be held within 30 days of the date of delivery of the request and take place, unless the Parties agree otherwise, in the territory of the respondent Party.
3. The consultations shall be deemed concluded within 30 days of the date of delivery of the request, unless the Parties agree to continue consultations.
4. Consultations on matters of special urgency shall be held within 15 days of the date of delivery of the request. The consultations shall be deemed concluded within those 15 days unless the Parties agree to continue consultations.
5. The following shall *inter alia* constitute “matters of special urgency” within the meaning of paragraph 4:
  - (a) [PLACEHOLDER, e.g. matters regarding perishable goods or seasonal goods or services]
6. Each Party shall provide sufficient factual information to allow a complete examination of the matter. Each Party shall endeavour to ensure the participation of personnel of their competent authorities who have expertise in the matter subject to the consultations.

#### Article INST.15: Arbitration procedure

1. If the Partnership Council has failed to resolve the dispute within 180 days after the notification referred to in Article INST.13 [Consultations in the framework of the Partnership Council], or if the Parties agree not to have or continue consultations, the complaining Party may



request the establishment of an arbitration tribunal in accordance with ANNEX INST-3 [Rules of Procedure].

In the case of accelerated consultations in accordance with Article INST.14 [Accelerated consultations], the complaining Party may request the establishment of an arbitration tribunal, if the respondent Party does not respond to the request for consultations within 10 days of the date of its delivery, if consultations are not held within the timeframes laid down in Article INST.14(2) or (4) respectively, or if the Parties agree not to have consultations, or if consultations have been concluded without a mutually agreed solution having been reached.

2. The request for the establishment of the arbitration tribunal shall be made by means of a written request delivered to the respondent Party and to the International Bureau of the Permanent Court of Arbitration. *[ANNEX INST-3 [Rules of Procedure] sets out the content of the request and the procedure for the establishment of the arbitration tribunal in a given case.]*

#### Article INST.16: Disputes raising questions of Union law

1. Where a dispute submitted to arbitration raises a question of interpretation or application of a concept of Union law contained in this Agreement or any supplementing agreement, or of a provision of Union law referred to in this Agreement or any supplementing agreement, the arbitration tribunal shall not decide on any such question. In such case, it shall request the Court of Justice of the European Union to give a ruling on the question. The Court of Justice of the European Union shall have jurisdiction to give such a ruling which shall be binding on the arbitration tribunal.

2. The arbitration tribunal shall make the request referred to in the first subparagraph after having heard the parties.

3. Without prejudice to the first sentence of paragraph 1, if the Union or the United Kingdom considers that a request in accordance with paragraph 1 is to be made, it may make submissions to the arbitration tribunal to that effect. In such case, the arbitration tribunal shall submit the request in accordance with paragraph 1.

4. In the cases referred to in paragraphs 1 and 2, the time limits laid down in Article INST.17 [Ruling of the arbitration tribunal] shall be suspended until the Court of Justice of the European Union has given its ruling. The arbitration tribunal shall not be required to give its ruling in less than 60 days from the date on which the Court of Justice of the European Union has given its ruling.

5. The provisions of Union law governing procedures before the Court of Justice of the European Union in accordance with Article 267 TFEU shall apply *mutatis mutandis* to requests for a ruling of the Court of Justice made pursuant to this Chapter.

6. In cases brought before the Court of Justice of the European Union in accordance with paragraph 1, the United Kingdom may participate in the proceedings before the Court of Justice of the European Union. Lawyers authorised to practice before the courts or tribunals of the United Kingdom shall be entitled to represent or assist the United Kingdom in such proceedings.

#### Article INST.17: Ruling of the arbitration tribunal

1. In its ruling, the arbitration tribunal shall make a finding as to whether, and as the case may be, to what extent, the respondent Party has breached an obligation under this Agreement or any supplementing agreement.

2. The arbitration tribunal shall deliver, and notify to the Parties, its ruling within 12 months from the date of its establishment. Where the arbitration tribunal considers that it cannot comply with this time limit, its chairperson shall notify the Parties in writing, stating the reasons for the delay and the date on which the arbitration tribunal intends to deliver its ruling.

3. In the cases referred to in Article INST.12(3) [Consultations], the following shall apply:

(a) The arbitration tribunal shall deliver an interim report to the Parties within 90 days after the date of establishment of the arbitration tribunal. When the arbitration tribunal considers that this deadline cannot be met, the chairperson of the arbitration tribunal shall notify the Parties in writing, stating the reasons for the delay and the date on which the arbitration tribunal plans to deliver its interim report. The arbitration tribunal shall, under no circumstances, deliver its interim report later than 120 days after the date of establishment of the arbitration tribunal.

(b) Each Party may deliver to the arbitration tribunal a written request to review precise aspects of the interim report within 10 days of its delivery. A Party may comment on the other's Party's request within six days of the delivery of the request.

(c) If no written request to review precise aspects of the interim report are delivered within the time period referred to in point (b), the interim report shall become the ruling of the arbitration tribunal.

(d) The arbitration tribunal shall deliver its ruling to the Parties within 120 days of the date of establishment of the arbitration tribunal. When the arbitration tribunal considers that deadline cannot be met, its chairperson shall notify the Parties in writing, stating the reasons for the delay and the date on which the arbitration tribunal plans to deliver its final ruling. The arbitration tribunal shall, under no circumstances, deliver its ruling later than 150 days after the date of establishment of the arbitration tribunal.

(d) The ruling shall include a discussion of any written request by the Parties on the interim report and clearly address the comments of the Parties.

### Chapter three: Compliance

#### Article INST.18: Compliance measures

1. If in its ruling referred to in Article INST.17(1) [Ruling of the arbitration tribunal] the arbitration tribunal finds that the respondent Party has breached an obligation under this Agreement or any supplementing agreement, that Party shall take the necessary measures to comply immediately with the ruling of the arbitration tribunal.

2. The respondent Party shall, no later than 30 days after delivery of the ruling, deliver a notification to the complaining Party of the measures which it has taken or which it envisages to take to comply.

#### *Section 1*

#### Article INST.19: Reasonable period of time for compliance

1. If immediate compliance is not possible, the respondent Party shall, no later than 30 days after delivery of the ruling referred to in Article INST.17(1) [Ruling of the arbitration tribunal], set out, in a notification delivered to the complaining Party, the duration of the reasonable period of time it will require for compliance.

2. If the complaining Party disagrees with the duration of the reasonable period of time set out in the notification referred to in paragraph 1, it may, at the earliest 20 days after the delivery of that notification, request in writing the arbitration tribunal to determine the duration of the reasonable period of time. The arbitration tribunal shall deliver its decision to the Parties within 40 days of the date of delivery of the request.
3. The respondent Party shall deliver a written notification of its progress in complying with the ruling to the complaining Party at least one month before the expiry of the reasonable period of time.
4. The Parties may agree to extend the reasonable period of time.

#### Article INST.20: Compliance review

1. The respondent Party shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the ruling of the arbitration panel referred to in Article INST.17(1) [Ruling of the arbitration tribunal].
2. If, at the end of the reasonable period of time, the complaining Party considers that the respondent Party has failed to comply with the ruling of the arbitration tribunal referred to in Article INST 17(1) [Ruling of the arbitration tribunal], it may deliver a written request to the arbitration tribunal to decide on the matter. The arbitration tribunal shall deliver its decision to the Parties within 90 days of the date of delivery of the request.
3. Where a case referred to the arbitration tribunal pursuant to paragraph 2 raises a question of Union law, Article INST.16 [Disputes raising questions of Union law] shall apply *mutatis mutandis*.
4. If the arbitration tribunal rules in accordance with paragraph 2 that the respondent Party has failed to comply with the ruling of the arbitration tribunal it may, in the same ruling and at the request of the complaining Party, impose a lump sum or penalty payment to be paid by the respondent to the complainant. In determining the lump sum or penalty payment, the arbitration tribunal shall take into account the seriousness and the duration both of the non-compliance with the ruling referred to in Article INST.17 [Ruling of the arbitration tribunal] and of the underlying breach of obligation.

#### Article INST.21: Temporary remedies in case of non-compliance

1. If, one month after the arbitration tribunal ruling referred to in Article INST.20(4) [Compliance review], the respondent Party has failed to pay any lump sum or penalty payment imposed on it, or if, 6 months after the ruling of the arbitration tribunal referred to in Article INST.17 [Ruling of the arbitration tribunal], the respondent Party persists in not complying with the latter arbitration tribunal ruling, the complaining Party shall be entitled, upon notification to the respondent Party, to suspend obligations arising from any provision of this Agreement or of any supplementing agreement.

The notification shall specify the provisions which the complaining Party intends to suspend. Any suspension shall be proportionate to the breach of obligation concerned, taking into account the gravity of the breach and the rights in question and, where the suspension is based on the fact that the respondent persists in not complying with the arbitration tribunal ruling referred to in Article INST.17(1) [Ruling of the arbitration tribunal] whether a penalty payment has been imposed on the respondent and has been paid or is still being paid by the latter.

The complaining Party may proceed to the suspension at any moment but not earlier than 10 days after the date of the notification, unless the respondent Party has requested arbitration under paragraph 2.

2. If the respondent Party considers that the extent of the suspension set out in the notification referred to in the first subparagraph of paragraph 1 is not proportionate, it may deliver a written request to the arbitration tribunal to rule on the matter. Such request shall be notified to the complaining Party before the expiry of the period referred to in the last subparagraph of paragraph 1. The arbitration tribunal shall notify its ruling to the Union and the United Kingdom within 60 days of the date of submission of the request. Obligations shall not be suspended until the arbitration tribunal has notified its ruling, and any suspension shall be consistent with the arbitration tribunal ruling.

3. The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions of this Agreement has been withdrawn or amended, so as to achieve conformity with the provisions of this Agreement.

Article INST.22: Review of any measure taken to comply after the adoption of temporary remedies

1. Where the complainant has suspended obligations in accordance with Article INST.21 [Temporary remedies in case of non-compliance] or where the arbitration tribunal has imposed a penalty payment on the respondent in accordance with Article INST.20(4) [Compliance review], the respondent shall notify the complainant of any measure it has taken to comply with the ruling of the arbitration tribunal and of its request for an end to the suspension of obligations applied by the complainant or to the penalty payment.

2. If the Parties do not reach an agreement on whether the notified measure brings the respondent into conformity with the provisions of this Agreement within 45 days of the date of submission of the notification, either party may request the arbitration tribunal in writing to rule on the matter. Such request shall be notified simultaneously to the other party. The arbitration tribunal ruling shall be notified to the Union and the United Kingdom and to the Partnership Council within 75 days of the date of submission of the request.

If the arbitration tribunal rules that the respondent has brought itself into conformity with this Agreement, or if the complainant does not, within 45 days of the submission of the notification referred to in paragraph 1, request that the original arbitration tribunal rule on the matter:

- (a) the suspension of obligations shall be terminated within 15 days of either the ruling of the arbitration tribunal or the end of the 45-day period;
- (b) the penalty payment shall be terminated on the day after either the ruling of the arbitration tribunal or the end of the 45-day period.

3. Where a case referred to the arbitration tribunal pursuant to paragraph 2 raises a question of Union law, Article INST.16 [Disputes raising questions of Union law] shall apply *mutatis mutandis*.

## Section 2

Article INST.23: Scope of application

In cases of disputes concerning [Placeholder], this Section shall apply instead of Section 1.

#### Article INST.24: Reasonable Period of Time

1. If immediate compliance is not possible, the respondent Party shall, no later than 30 days after delivery of the ruling referred to in Article INST.17(1) [Ruling of the arbitration tribunal], deliver a notification to the complaining Party of the length of the reasonable period of time it will require for compliance. The Parties shall endeavour to agree on the length of the reasonable period of time to comply with the ruling referred to in Article INST.17(1) [Ruling of the arbitration tribunal].
2. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party may, at the earliest 20 days after the delivery of the notification in paragraph 1, request in writing the original arbitration tribunal to determine the length of the reasonable period of time. The panel shall deliver its decision to the Parties within 20 days of the date of delivery of the request.
3. The respondent Party shall deliver a written notification of its progress in complying with the ruling referred to in Article INST.17(1) [Ruling of the arbitration tribunal] to the complaining Party at least one month before the expiry of the reasonable period of time.
4. The Parties may agree to extend the reasonable period of time.

#### Article INST.25: Compliance Review

1. The respondent Party shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the ruling referred to in Article INST.17(1) [Ruling of the arbitration tribunal].
2. When the Parties disagree on the existence or the consistency with the covered provisions of any measure taken to comply, the complaining Party may deliver a request, in writing, to the original arbitration tribunal to decide on the matter. The request shall identify any measure at issue and explain how that measure constitutes a breach of the covered provisions in a manner sufficient to present the legal basis for the complaint clearly. The arbitration tribunal shall deliver its decision to the Parties within 46 days of the date of delivery of the request.

#### Article INST.26: Temporary Remedies

1. The respondent Party shall, upon request by and after consultations with the complaining Party, present an offer for temporary compensation if:
  - (a) the Party complained against delivers a notification to the complaining Party that it is not possible to comply with the ruling referred to in Article INST.17(1) [Ruling of the arbitration tribunal]; or
  - (b) the Party complained against fails to deliver a notification of any measure taken to comply within the deadline referred to in Article INST.18 [Compliance Measures] or before the date of expiry of the reasonable period of time; or
  - (c) the arbitration tribunal finds that no measure taken to comply exists or that the measure taken to comply is inconsistent with the covered provisions.
2. In any of the conditions referred to in subparagraphs 1(a) to (c), the complaining Party may deliver a written notification to the respondent Party that it intends to suspend the application of obligations under the covered provisions if:

- (a) the complaining Party decides not to make a request under paragraph 1; or
- (b) the Parties do not agree on the temporary compensation within 20 days after the expiry of the reasonable period of time or the delivery of the arbitration tribunal decision under Article INST.25 [Compliance Review] when a request under paragraph 1 is made.

The notification shall specify the level of intended suspension of obligations.

3. The complaining Party may suspend the obligations 10 days after the date of delivery of the notification referred to in paragraph 2, unless the respondent Party made a request under paragraph 5.

4. The suspension of obligations shall not exceed the level equivalent to the nullification or impairment caused by the violation.

5. If the respondent Party considers that the notified level of suspension of obligations exceeds the level equivalent to the nullification or impairment caused by the violation, it may deliver a written request to the original arbitration tribunal before the expiry of the 10 day period set out in paragraph 3 to decide on the matter. The arbitration tribunal shall deliver its decision on the level of the suspension of obligations to the Parties within 30 days of the date of the request. Obligations shall not be suspended until the arbitration tribunal has delivered its decision. The suspension of obligations shall be consistent with this decision.

6. The suspension of obligations or the compensation referred to in this Article shall be temporary and shall not be applied after:

- (a) the Parties have reached a mutually agreed solution pursuant to Article INST.32 [Mutually agreed solution];
- (b) the Parties have agreed that the measure taken to comply brings the respondent Party into conformity with the covered provisions; or
- (c) any measure taken to comply which the arbitration tribunal has found to be inconsistent with the covered provisions has been withdrawn or amended so as to bring the Party complained against into conformity with those provisions.

Article INST.27: Review of any measure taken to comply after the adoption of temporary remedies

1. The respondent Party shall deliver a notification to the complaining Party of any measure it has taken to comply following the suspension of obligations or following the application of temporary compensation, as the case may be. With the exception of cases under paragraph 2, the complaining Party shall terminate the suspension of obligations within 30 days from the delivery of the notification. In cases where compensation has been applied, and with the exception of cases under paragraph 2, the respondent Party may terminate the application of such compensation within 30 days from delivery of its notification that it has complied.

2. If the Parties do not reach an agreement on whether the notified measure brings the respondent Party into conformity with the covered provisions within 30 days of the date of delivery of the notification, the complaining Party shall deliver a written request to the original arbitration tribunal to decide on the matter. The arbitration tribunal shall deliver its decision to the Parties within 46 days of the date of the delivery of the request. If the arbitration tribunal finds that the measure taken to comply is in conformity with the covered provisions, the suspension of obligations

or compensation, as the case may be, shall be terminated. When relevant, the level of suspension of obligations or of compensation shall be adjusted in light of the arbitration tribunal decision.

#### Chapter four: Common procedural provisions

##### Article INST.28: Lists of arbitrators

1. The Partnership Council shall, no later than 180 days after the date of entry into force of this Agreement, establish lists of individuals with expertise in specific sectors covered by this Agreement or its supplementing agreements who are willing and able to serve as members of an arbitration tribunal. Each list shall be of at least 15 persons and shall be composed of three sub-lists:

- (a) one sub-list of individuals established on the basis of proposals by the European Union;
- (b) one sub-list of individuals established on the basis of proposals by the United Kingdom; and
- (c) one sub-list of individuals who shall serve as chairperson to the arbitration tribunal.

Each sub-list shall include at least five individuals. The Partnership Council shall ensure that the lists are always maintained at this minimum number of individuals.

2. The lists established pursuant to paragraph 1 shall only comprise persons whose independence is beyond doubt, who possess the qualifications required for appointment to the highest judicial office in their respective countries or who are jurisconsults of recognised competence and who possess the requirements for arbitrators in accordance with the rules of procedure.

3. The lists referred to paragraphs 1 shall not comprise persons who are members, officials or other servants of the Union institutions or of the government of the United Kingdom.

##### Article INST.29: Rules of procedure

1. Dispute settlement procedures set out in this Title shall be governed by the rules of procedure set out in ANNEX INST-3 [Rules of Procedure].

2. The Partnership Council may amend the ANNEXES INST-3 [Rules of procedure] and INST-4 [Code of conduct].

##### Article INST.30: Arbitration tribunal decisions and rulings

1. The deliberations of the arbitration tribunal shall be kept confidential. The arbitration tribunal shall make every effort to draft rulings and take decisions by consensus. If this is not possible, the arbitration tribunal shall decide the matter by majority vote. In no case shall separate opinions of arbitrators be disclosed.

2. The decisions and rulings of the arbitration tribunal shall be binding on the Union and the United Kingdom. They shall not create any rights or obligations with respect to natural or legal persons.

3. Decisions and rulings of the arbitration tribunal cannot add to or diminish the rights and obligations of the Parties under this Agreement.

4. Each Party shall make the rulings and decisions of the arbitration tribunal publicly available, subject to the protection of confidential information.

5. The information submitted by Parties to the arbitration tribunal shall be treated in accordance with the confidentiality rules laid down in ANNEX-INST-3 [Rules of procedure].

#### Article INST.31: Suspension and termination of the arbitration proceedings

At the request of both Parties, the arbitration tribunal shall suspend its work at any time for a period agreed by the Parties and not exceeding 12 consecutive months. The arbitration tribunal shall resume its work before the end of the suspension period at the written request of both Parties, or at the end of the suspension period at the written request of either Party. The requesting Party shall deliver a notification to the other Party accordingly. If a Party does not request the resumption of the arbitration tribunal's work at the expiry of the suspension period, the authority of the arbitration tribunal shall lapse and the dispute settlement procedure shall be terminated. In the event of a suspension of the work of the arbitration tribunal, the relevant time periods shall be extended by the same period of time for which the work of the arbitration tribunal was suspended.

#### Article INST.32: Mutually agreed solution

The Parties may at any time reach a mutually agreed solution with respect to any dispute referred to in Article INST.9 [Scope].

#### Article INST.33: Time Periods

1. All time periods laid down in this Title shall be counted in calendar days from the day following the act to which they refer.
2. Any time period referred to in this Title may be modified by mutual agreement of the Parties.
3. The arbitration tribunal may at any time propose to the Parties to modify any time period referred to in this Chapter, stating the reasons for the proposal.

#### Article INST.34: Costs

1. Each Party shall bear its own expenses derived from the participation in the arbitration tribunal procedure.
2. The Parties shall share jointly and equally the expenses derived from organisational matters, including the remuneration and expenses of the members of the arbitration tribunal. The remuneration of the arbitrators shall be in accordance with INST ANNEX-3 [Rules of procedure].

### *TITLE III: FULFILMENT OF OBLIGATIONS AND SAFEGUARD MEASURES*

#### Article INST.35: Fulfilment of obligations described as essential elements

1. If either Party considers that the other Party has failed to fulfil any of the obligations that are described as essential elements in Article COMPROV.12 [Essential elements], it may take appropriate measures. For the purpose of this paragraph, "appropriate measures" may include the suspension, in part or in full, of this Agreement as well as of any supplementing agreement.
2. "Appropriate measures" referred to in paragraph 1 above shall be taken in full respect of international law and shall be proportionate. Priority must be given to those which least disturb the functioning of this Agreement.



## Article INST.36: Safeguard measures

1. If serious economic, societal or environmental difficulties of a sectorial or regional nature that are liable to persist are arising, the Party concerned may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement and its supplementing agreements.
2. The Party concerned shall, without delay, notify the other Party through the Partnership Council and shall provide all relevant information. The Parties shall immediately enter into consultations in the Partnership Council with a view to finding a commonly acceptable solution.
3. The Party concerned may not take safeguard measures until one month has elapsed after the date of notification under paragraph 2, unless the consultation procedure pursuant to paragraph 2 has been concluded before the expiration of the stated time limit. When exceptional circumstances requiring immediate action exclude prior examination, the Party concerned may apply forthwith the safeguard or rebalancing measures strictly necessary to remedy the situation.
4. The Party concerned shall, without delay, notify the measures taken to the Partnership Council and shall provide all relevant information.
5. If a safeguard measure taken by the Party concerned creates an imbalance between the rights and obligations under this Agreement and its supplementing agreements, the other Party may take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of this Agreement and its supplementing agreements. Paragraphs 2 to 4 shall apply mutatis mutandis to such rebalancing measures.
6. Either Party may, without having prior recourse to consultations in accordance with Article 13 [Consultations in the framework of the Partnership Council] or Article 14 [Accelerated consultations], initiate the arbitration procedure referred to in Article INST.15 [Arbitration procedure] to challenge a measure taken by the other Party in application of paragraphs 1 to 5.

## PART SIX: FINAL PROVISIONS

### Article FINPROV.1: Territorial scope<sup>31</sup>

1. This Agreement shall apply to:
  - (a) the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community are applicable, and under the conditions laid down in those Treaties; and
  - (b) the territory of the United Kingdom.
2. This Agreement shall neither apply to Gibraltar nor have any effects in that territory.
3. This Agreement shall not apply to:
  - (a) the Channel Islands and the Isle of Man;
  - (b) the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus;
  - (c) the overseas countries and territories having special relations with the United Kingdom: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Montserrat, Pitcairn, Saint Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, and Turks and Caicos Islands.

### Article FINPROV.2: Relation to the Withdrawal Agreement

This Agreement shall apply without prejudice to the Withdrawal Agreement.

This Agreement or any supplementing agreement shall constitute an “other agreement” for the purposes of Article 178(2)(b) of the Withdrawal Agreement.

### Article FINPROV.3: Review

The Parties shall jointly review the implementation of this Agreement and any matters related thereto two years after the entry into force of this Agreement and every four years thereafter.

### Article FINPROV.4: Security exceptions

Nothing in this Agreement or in any supplementing agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Party from taking an action which it considers necessary for the protection of its essential security interests:
  - (i) connected to the production of or traffic in arms, ammunition and implements of war and to such production, traffic and transactions in other goods and materials, services and

---

<sup>31</sup> The following definition should be added to Article COMPROV.17 [Definitions]: ““territory” of a Party means in respect of each Party the territories to which the Agreement applies in accordance with Article FINPROV.1 [Territorial scope].”

technology, and to economic activities, carried out directly or indirectly for the purpose of supplying a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived; or

(iii) in time of war or other emergency in international relations; or

(c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

#### Article FINPROV.5: Confidential information

1. Nothing in this Agreement or in any supplementing agreement shall be construed as requiring a Party to make available confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private, except where an arbitration tribunal requires such confidential information in dispute settlement proceedings under Title II [Dispute settlement] of Part Five [Institutional and horizontal provisions]. In such cases, the arbitration tribunal shall ensure that confidentiality is fully protected in accordance with ANNEX INST-3 [Rules of Procedure].

2. When a Party submits information to the Partnership Council or to specialised committees that is considered as confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

#### Article FINPROV.6: Classified information

Nothing in this Agreement or in any supplementing agreement shall be construed as requiring a Party to make available classified information.

Protocol No [...] on the Security of Classified Information applies to classified information provided by or exchanged between the Parties. The Partnership Council may amend that Protocol.

#### Article FINPROV.7: Protocols and Annexes

The Protocols and Annexes shall form an integral part of this Agreement.

#### Article FINPROV.8: Termination

Either Party may terminate this Agreement by written notification through diplomatic channels. The Agreement and any supplementing agreement shall cease to be in force on the first day of the twelfth month following the date of notification.

[PLACEHOLDER: post-termination or suspension obligations]

#### Article FINPROV.9: Authentic texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

Article FINPROV.10: Entry into force

This Agreement shall enter into force on the [DATE]<sup>32</sup>, provided that prior to that date the Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.

DRAFT

---

<sup>32</sup> This date should be the day following the last day of the transition period under the Withdrawal Agreement.

*ANNEX LPFS-X – LIST OF STATE AID ACTS AND PROVISIONS*

[Placeholder]

DRAFT

*ANNEX GOODS-1: JOINT DECLARATION CONCERNING CUSTOMS UNIONS*

The EU recalls the obligations of the countries that have established a customs union with the Union to align their trade regime to that of the Union and, for certain of them, to conclude preferential agreements with countries that have preferential agreements with the Union.

In this context, the Parties note that the United Kingdom shall start negotiations with those countries:

- (a) which have established a customs union with the Union, and
- (b) whose products do not benefit from the tariff concessions under this Agreement,

with a view to concluding a bilateral agreement establishing a free trade area in accordance with Article XXIV of the GATT 1994. The United Kingdom shall start negotiations as soon as possible with a view to having those agreements entering into force as soon as possible after the entry into force of this Agreement.

DRAFT

[Placeholder]

DRAFT

[Placeholder]

DRAFT



[Placeholder]

DRAFT

[Placeholder]

DRAFT

[Placeholder]

DRAFT

*ANNEX TBT-1: INTERNATIONAL STANDARDISING BODIES REFERRED TO IN ARTICLE 4(4)*

1. International Organisation for Standardisation (ISO)
2. International Electrotechnical Commission (IEC)
3. International Telecommunication Union (ITU)
4. Codex Alimentarius Commission
5. International Civil Aviation Organisation (ICAO)
6. World Forum for Harmonisation of Vehicle Regulations (WP.29) within the framework of the United Nations Economic Commission for Europe (UNECE)
7. United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UN/SCEGHS)
8. International Council on Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH)
9. International Maritime Organisation (IMO)
10. International Organisation of Legal Metrology (OIML)
11. Bureau International des Poids et Mesures (BIPM)
12. International Olive Council (IOC)
13. International Organisation of Vine and Wine (OIV)
14. Universal Postal Union (UPU)
15. World Organisation for Animal Health (OIE)
16. International Labour Organisation (ILO)

ANNEX FISH-1: LIST OF SHARED STOCKS

Species	TAC name	ICES area
Alfonsinos	ALF/3X14-	Union, UK and international waters of 3, 4, 5, 6, 7, 8, 9, 10, 12 and 14
Anglerfish	ANF/07.	Union and UK waters of 7
Anglerfish	ANF/2AC4-C	Union and UK waters of 2a and 4
Anglerfish	ANF/56-14	Waters of 6; Union, UK and international waters of 5b; international waters of 12 and 14
Greater silver smelt	ARU/1/2.	Union, UK and international waters of 1 and 2
Greater silver smelt	ARU/3A4-C	Union and UK waters of 3a and 4
Greater silver smelt	ARU/567.	Union, UK and international waters of 5, 6 and 7
Blue ling	BLI/12INT-	International waters of 12
Blue ling	BLI/24-	Union, UK and international waters of 2 and 4
Blue ling	BLI/5B67-	Union, UK and international waters of 5b, 6 and 7
Boarfish	BOR/678-	Union, UK and international waters of 6, 7 and 8
Black scabbardfish	BSF/56712-	Union, UK and international waters of 5, 6, 7 and 12
Cod	COD/07A.	Union and UK waters of 7a
Cod	COD/07D.	Union and UK waters of 7d
Cod	COD/2A3AX4	Union and UK waters of 4; Union and UK waters of 2a; that part of 3a not covered by the Skagerrak and Kattegat
Cod	COD/5BE6A	Union and UK waters of 6a; Union and international waters of 5b east of 12° 00' W
Cod	COD/5W6-14	Union and UK waters of 6b; Union, UK and international waters of 5b west of 12° 00' W and of 12 and 14
Cod	COD/7XAD34	Union and UK waters 7b, 7c, 7e-k; Union waters of 8,

Species	TAC name	ICES area
		9, 10 and CECAF 34.1.1
Picked dogfish	DGS/15X14	Union, UK and international waters of 1, 5, 6, 7, 8, 12 and 14
Greenland halibut	GHL/2A-C46	Union and UK waters of 2a and 4; Union, UK and international waters of 5b and 6
Haddock	HAD/07A.	Union and UK waters of 7a
Haddock	HAD/2AC4.	Union and UK waters of 2a and 4
Haddock	HAD/5BC6A.	Union, UK and international waters of 5b and 6a
Haddock	HAD/6B1214	Union, UK and international waters of 6b, 12 and 14
Haddock	HAD/7X7A34	Union and UK waters of 7b-k; Union waters of 8, 9, 10 and CECAF 34.1.1
Herring	HER/07A/MM	Union and UK waters of 7a. This zone is reduced by the area bounded to the north by latitude 52° 30' N, to the south by latitude 52° 00' N, to the west by the coast of Ireland, and to the east by the coast of the United Kingdom.
Herring	HER/1/2-	Union, UK and Faroese, Norwegian and international waters of 1 and 2
Herring	HER/2A47DX	Waters of 4 and Union and UK waters of 7d and 2a
Herring	HER/4AB.	Union, UK and Norwegian waters of 4 north of 53° 30' N
Herring	HER/4CXB7D	Union and UK waters of 4c and 7d. Except Blackwater stock: reference is to the herring stock in the maritime region of the Thames estuary within a zone delimited by a rhumb line running due south from Landguard Point (51° 56' N, 1° 19,1' E) to latitude 51° 33' N and hence due west to a point on the coast of the United Kingdom.
Herring	HER/5B6ANB	Union, UK and international waters of 5b, 6b and 6aN. Reference is to the herring stock in the part of ICES zone 6a which lies east of the meridian of longitude 7°

Species	TAC name	ICES area
		W and north of the parallel of latitude 55° N, or west of the meridian of longitude 7° W and north of the parallel of latitude 56° N, excluding the Clyde.
Herring	HER/7EF.	Union and UK waters of 7e and 7f
Herring	HER/7G-K.	Union and UK waters of 7g, 7h, 7j and 7k. This zone is increased by the area bounded: to the north by latitude 52° 30' N, to the south by latitude 52° 00' N, to the west by the coast of Ireland, to the east by the coast of the United Kingdom
Hake	HKE/2AC4-C	Union and UK waters of 2a and 4
Hake	HKE/3A/BCD	Union waters of 3a
Hake	HKE/571214	Union and UK waters of 6 and 7; Union, UK and international waters of 5b; international waters of 12 and 14
Hake	HKE/8ABDE.	Union waters of 8a, 8b, 8d and 8e
Horse mackerel	JAX/2A-14	Union and UK waters of 2a, 4a; 6, 7a-c, 7e-k, 8a, 8b, 8d and 8e; Union, UK and international waters of 5b; international waters of 12 and 14
Horse mackerel	JAX/4BC7D	Union and UK waters of 4b, 4c and 7d
Lemon sole and witch	L/W/2AC4-C	Union and UK waters of 2a and 4
Megrim	LEZ/07.	Union and UK waters of 7
Megrim	LEZ/2AC4-C	Union and UK waters of 2a and 4
Megrim	LEZ/56-14	Union, UK and international waters of 5b; 6; international waters of 12 and 14
Ling	LIN/04-C.	Union and UK waters of 4
Ling	LIN/05EI.	Union, UK and international waters of 5
Ling	LIN/1/2.	Union, UK and international waters of 1 and 2
Ling	LIN/03A-C.	Union waters of 3a

Species	TAC name	ICES area
Ling	LIN/6X14.	Union, UK and international waters of 6, 7, 8, 9, 10, 12 and 14
Mackerel	MAC/2A34.	Waters of 3a and 4; Union and UK waters of 2a; Union waters of 3b, 3c and Subdivisions 22-32
Mackerel	MAC/2CX14-	Union and UK waters of 6, 7, 8a, 8b, 8d and 8e; Union, UK and international waters of 5b; international waters of 2a, 12 and 14
Norway lobster	NEP/*07U16	Union and UK waters of 7. Functional Unit 16 of ICES Subarea
Norway lobster	NEP/07.	Union and UK waters of 7
Norway lobster	NEP/2AC4-C	Union and UK waters of 2a and 4
Norway lobster	NEP/5BC6.	Waters of 6; Union, UK and international waters of 5b
Norway pout	NOP/2A3A4.	Waters of 3a; Union and UK waters of 2a and 4
Plaice	PLE/07A.	Union and UK waters of 7a
Plaice	PLE/2A3AX4	Waters of 4; Union and UK waters of 2a; that part of 3a not covered by the Skagerrak and the Kattegat
Plaice	PLE/56-14	Waters of 6; Union, UK and international waters of 5b; international waters of 12 and 14
Plaice	PLE/7DE.	Union and UK waters of 7d and 7e
Plaice	PLE/7FG.	Union and UK waters of 7f and 7g
Plaice	PLE/7HJK.	Union and UK waters of 7h, 7j and 7k
Saithe	POK/2C3A4	Waters of 3a and 4; Union and UK waters of 2a
Saithe	POK/56-14	Waters of 6; Union and international waters of 5b, 12 and 14
Saithe	POK/7/3411	Union and UK waters of 7; Union waters of 8, 9, 10 and CECAF 34.1.1
Pollack	POL/07.	Union and UK waters of 7



Species	TAC name	ICES area
Pollack	POL/56-14	Waters of 6; Union, UK and international waters of 5b; international waters of 12 and 14
Northern prawn	PRA/2AC4-C	Union and UK waters of 2a and 4
Small-eyed ray	RJE/7FG.	Union and UK waters of 7f and 7g
Undulate ray	RJU/7DE.	Union and UK waters of 7d and 7e
Roundnose grenadier	RNG/5B67-	Union, UK and international waters of 5b, 6 and 7
Roundnose grenadier	RNG/8X14-	Union and international waters of 8, 9, 10, 12 and 14
Sandeel and ass. by-catches	SAN/2A3A4.	Union and UK waters of 2a, 3a and 4
Red seabream	SBR/10-	Union and international waters of 10
Red seabream	SBR/678-	Union, UK and international waters of 6, 7 and 8
Common sole	SOL/07A.	Union and UK waters of 7a
Common sole	SOL/07D.	Union and UK waters of 7d
Common sole	SOL/07E.	Union and UK waters of 7e
Common sole	SOL/24-C.	Union and UK waters of 2a and 4
Common sole	SOL/56-14	Waters of 6; Union, UK and international waters of 5b; international waters of 12 and 14
Common sole	SOL/7FG.	Union and UK waters of 7f and 7g
Common sole	SOL/7HJK.	Union and UK waters of 7h, 7j and 7k
Sprat	SPR/2AC4-C	Union and UK waters of 2a and 4
Sprat	SPR/7DE.	Union and UK waters of 7d and 7e
Skates and rays	SRX/07D.	Union and UK waters of 7d
Skates and rays	SRX/2AC4-C	Union and UK waters of 2a and 4
Skates and rays	SRX/67AKXD	Union and UK waters of 6a, 6b, 7a-c and 7e-k
Skates and rays	SRX/89-C.	Union waters of 8 and 9

Species	TAC name	ICES area
Turbot and brill	T/B/2AC4-C	Union and UK waters of 2a and 4
Tusk	USK/04-C.	Union and UK waters of 4
Tusk	USK/1214EI	Union, UK and international waters of 1, 2 and 14
Tusk	USK/567EI.	Union, UK and international waters of 5, 6 and 7
Blue whiting	WHB/1X14	Union, UK and international waters of 1, 2, 3, 4, 5, 6, 7, 8a, 8b, 8d, 8e, 12 and 14
Whiting	WHG/07A.	Union and UK waters of 7a
Whiting	WHG/2AC4.	Waters of 4; Union and UK waters of 2a
Whiting	WHG/56-14	Waters of 6; Union, UK and international waters of 5b; international waters of 12 and 14
Whiting	WHG/7X7A-C	Union and UK waters of 7b, 7c, 7d, 7e, 7f, 7g, 7h, 7j and 7k
Seabass	Northern seabass	Union and UK waters of 4b, 4c, 7a, and 7d to 7h

*ANNEX FISH-2: ALLOCATION OF FISHING OPPORTUNITIES*

[It is planned to uphold here existing quota shares as per Article FISH.1(a)]

<b>Species</b>	<b>TAC name</b>	<b>EU %</b>	<b>UK %</b>
Alfonsinos	ALF/3X14-		
Anglerfish	ANF/07.		
Anglerfish	ANF/2AC4-C		
Anglerfish	ANF/56-14		
Greater silver smelt	ARU/1/2.		
Greater silver smelt	ARU/34-C		
Greater silver smelt	ARU/567.		
Blue ling	BLI/12INT-		
Blue ling	BLI/24-		
Blue ling	BLI/5B67-		
Boarfish	BOR/678-		
Black scabbardfish	BSF/56712-		
Cod	COD/07A.		
Cod	COD/07D.		
Cod	COD/2A3AX4		
Cod	COD/5BE6A		
Cod	COD/5W6-14		
Cod	COD/7XAD34		
Picked dogfish	DGS/15X14		
Greenland halibut	GHL/2A-C46		
Haddock	HAD/07A.		
Haddock	HAD/2AC4.		
Haddock	HAD/5BC6A.		
Haddock	HAD/6B1214		

Haddock	HAD/7X7A34		
Herring	HER/06ACL.		
Herring	HER/07A/MM		
Herring	HER/1/2-		
Herring	HER/2A47DX		
Herring	HER/4AB.		
Herring	HER/4CXB7D		
Herring	HER/5B6ANB		
Herring	HER/7EF.		
Herring	HER/7G-K.		
Hake	HKE/2AC4-C		
Hake	HKE/3A/BCD		
Hake	HKE/571214		
Hake	HKE/8ABDE.		
Horse mackerel	JAX/2A-14		
Horse mackerel	JAX/4BC7D		
Lemon sole and witch	L/W/2AC4-C		
Megrim	LEZ/07.		
Megrim	LEZ/2AC4-C		
Megrim	LEZ/56-14		
Ling	LIN/04-C.		
Ling	LIN/05EI.		
Ling	LIN/1/2.		
Ling	LIN/3A/BCD		
Ling	LIN/6X14.*		
Mackerel	MAC/2A34.		

Mackerel	MAC/2CX14-		
Norway lobster	NEP/*07U16		
Norway lobster	NEP/07.		
Norway lobster	NEP/2AC4-C		
Norway lobster	NEP/5BC6.		
Norway pout	NOP/2A3A4.		
Plaice	PLE/07A.		
Plaice	PLE/2A3AX4		
Plaice	PLE/56-14		
Plaice	PLE/7DE.		
Plaice	PLE/7FG.		
Plaice	PLE/7HJK.		
Saithe	POK/2C3A4		
Saithe	POK/56-14		
Saithe	POK/7/3411		
Pollack	POL/07.		
Pollack	POL/56-14		
Northern prawn	PRA/2AC4-C		
Small-eyed ray	RJE/7FG.		
Undulate ray	RJU/7DE.		
Roundnose grenadier	RNG/5B67-		
Roundnose grenadier	RNG/8X14-		
Sandeel and associated by-catches	SAN/2A3A4.		
Red seabream	SBR/10-		
Red seabream	SBR/678-		
Common sole	SOL/07A.		

Common sole	SOL/07D.		
Common sole	SOL/07E.		
Common sole	SOL/24-C.		
Common sole	SOL/56-14		
Common sole	SOL/7FG.		
Common sole	SOL/7HJK.		
Sprat	SPR/2AC4-C		
Sprat	SPR/7DE.		
Skates and rays	SRX/07D.		
Skates and rays	SRX/2AC4-C		
Skates and rays	SRX/67AKXD		
Skates and rays	SRX/89-C.		
Turbot and brill	T/B/2AC4-C		
Tusk	USK/04-C.		
Tusk	USK/1214EI		
Tusk	USK/567EI.		
Blue whiting	WHB/1X14		
Whiting	WHG/07A.		
Whiting	WHG/2AC4.		
Whiting	WHG/56-14		
Whiting	WHG/7X7A-C		

*ANNEX FISH-3a: ACCESS BY UNION VESSELS TO UNITED KINGDOM WATERS*

A. Waters outside 12 nautical miles from the baselines

All sea fish species in any part of United Kingdom waters.

B. Areas between 6 and 12 nautical miles, from the baselines

All sea fish species

1. Lowestoft east,  
Lyme Regis south;
2. From a line due west Lundy Island to Cardigan Harbour;
3. Point Lynas North  
Morecambe Light Vessel east;
4. New Island north-east  
Sanda Island south-west;
5. Port Stewart north  
Barra Head west;
6. St Kilda, Flannan Islands
7. West of the line joining Butt of Lewis lighthouse to the point 59°30'N-5°45'W.

All species, except shellfish

8. Latitude 57° 40'N  
Butt of Lewis west.

Demersal fish species

9. Lyme Regis south  
Eddystone south;
10. Eddystone south  
Longships south-west;
11. Longships south-west  
Hartland Point north-west;
12. Hartland Point to a line from the north of Lundy Island;
13. County Down;

14. Point Lynas north  
Mull of Galloway south;
15. Mull of Oa west  
Barra Head west;
16. Cromer north  
North Foreland east;
17. North Foreland east  
Dungeness new lighthouse south;
18. Dungeness new lighthouse south, Selsey Bill south;
19. Straight Point south-east, South Bishop north-west.

#### Scallops

20. Eddystone south  
Longships south-west.

#### Lobster and crawfish

21. Longships south-west  
Hartland Point north-west;
22. Eddystone south  
Longships south-west.

#### Herring

23. Berwick-upon-Tweed east  
Coquet Island east;
24. Flamborough Head east  
Spurn Head east;
25. East of Shetlands and Fair Isle between lines drawn due south-east from Sumbrugh Head lighthouse due north-east from Skroo lighthouse and due south-west from Skadan lighthouse;
26. Berwick-upon-Tweed east, Whitby High lighthouse east;
27. North Foreland lighthouse east, Dungeness new lighthouse south;
28. Zone around St Kilda;
29. Butt of Lewis lighthouse west to the line joining Butt of Lewis lighthouse and the point 59°30'N-5°45'W;
30. Zone around North Rona and Sulisker (Sulasgeir);
31. Berwick-upon-Tweed east, Flamborough Head east;



32. North Forland east, Dungeness new lighthouse south.

Nephrops

33. Mull of Oa west

Barra Head west;

34. Point Lynas north

Mull of Galloway south.

Mackerel

Zone around St Kilda.

C. Access by Union vessels to Guernsey waters

D. Access by Union vessels to Jersey/Granville Bay waters

E. Access by Union vessels to Isle of Man waters

A. Waters outside 12 nautical miles from the baselines

All sea fish species in any part of the Union waters.

B. Areas between 6 and 12 nautical miles from the baselines

Demersal fish

1. Mine Head south, Hook Point;
2. Hook Point, Carlingford Lough;
3. Texel south point, west to the Netherlands/ German frontier.

Herring

4. Mine Head south, Hook Point;
5. Hook Point, Carlingford Lough;
6. Belgian/French frontier to Cap d'Alprech west (50° 42' 30" N — 1° 33' 30" E).

Mackerel

7. Mine Head south, Hook Point;
8. Hook Point, Carlingford Lough.

Cod

9. Zone around Helgoland.

Plaice

10. Zone around Helgoland.

Nephrops

11. Hook Point, Carlingford Lough.

Scallops

12. Hook Point, Carlingford Lough.

DRAFT

[Placeholder]

DRAFT

*ANNEX SERVIN-2: RESERVATIONS FOR FUTURE MEASURES*

[Placeholder]

DRAFT

*ANNEX SERVIN-3: RESERVATIONS FOR INTRA-CORPORATE TRANSFEREES, BUSINESS VISITORS FOR ESTABLISHMENT PURPOSES AND SHORT TERM BUSINESS VISITORS*

[Placeholder]

DRAFT

*ANNEX SERVIN-3BIS: LIST OF ACTIVITIES FOR SHORT-TERM BUSINESS VISITORS*

[Placeholder]

DRAFT

[Placeholder]

DRAFT



## ANNEX SERVIN-5: MOVEMENT OF NATURAL PERSONS<sup>33</sup>

### Article 1: Entry and temporary stay-related procedural commitments

The Parties shall endeavour to ensure that the processing of applications for entry and temporary stay pursuant to their respective commitments in the Agreement follows good administrative practice:

- (a) Each Party shall ensure that fees charged by competent authorities for the processing of applications for entry and temporary stay do not unduly impair or delay trade in services under this Agreement;
- (b) subject to the discretion of the competent authorities of each Party, documents required from an applicant for applications for the grant of entry and temporary stay of short-term visitors for business purposes should be commensurate with the purpose for which they are collected;
- (c) complete applications for the grant of entry and temporary stay shall be processed by the competent authorities of each Party as expeditiously as possible;
- (d) the competent authorities of each Party shall endeavour to provide, without undue delay, information in response to any reasonable request from an applicant concerning the status of an application;
- (e) if the competent authorities of a Party require additional information from an applicant in order to process the application, they shall endeavour to notify, without undue delay, the applicant;
- (f) the competent authorities of each Party shall notify the applicant of the outcome of the application promptly after a decision has been taken;
- (g) if an application is approved, the competent authorities of each Party shall notify the applicant of the period of stay and other relevant terms and conditions;
- (h) if an application is denied, the competent authorities of a Party shall, upon request or upon their own initiative make available to the applicant information on any available review and appeal procedures; and
- (i) each Party shall endeavour to accept and process applications in electronic format.

### Article 2: Additional procedural commitments applying to intra-corporate transferees and their family members<sup>34</sup>

1. The competent authorities of each Party shall adopt a decision on an application for an intra-corporate transferee entry or temporary stay or a renewal thereof and notify the decision to the applicant in writing, in accordance with the notification procedures under national law, as soon as possible but not later than 90 days after the date on which the complete application was submitted.

---

<sup>33</sup> The definitions included in Article SERVIN.1(2) and Article SERVIN.4(1)(5) of the Title on Services and investment apply to this Annex.

<sup>34</sup> Paragraphs 1, 2 and 3 do not apply for the Member States of the European Union that are not subject to the application of the Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer ("ICT Directive").

2. Where the information or documentation supplied in support of the application is incomplete, the competent authorities concerned shall notify the applicant within a reasonable period of the additional information that is required and set a reasonable deadline for providing it. The period referred to in paragraph 1 shall be suspended until the competent authorities have received the additional information required.

3. The Union shall extend to family members of natural persons of the United Kingdom, who are intra-corporate transferees to the Union, the right of temporary entry and stay granted to family members of an intra-corporate transferee under Article 19 of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

4. The United Kingdom shall extend to family members of natural persons of the Union, who are intra-corporate transferees to the United Kingdom, treatment that is equivalent to that granted in the Member State of the European Union of origin of those intra-corporate transferees to family members of natural persons of the United Kingdom who are intra-corporate transferees in that Member State.

DRAFT

*ANNEX SERVIN-6: GUIDELINES FOR ARRANGEMENTS ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS*

[Placeholder]

DRAFT

*NOTE DIGIT-1: COMPUTER SERVICES*

This provision should be placed as a common headnote to the lists of reservations.

1. The following services shall be considered as computer and related services, regardless of whether they are delivered via a network, including the Internet:

- (a) consulting, adaptation, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance or management of or for computers or computer systems;
- (b) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), as well as consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programmes;
- (c) data processing, data storage, data hosting or database services;
- (d) maintenance and repair services for office machinery and equipment, including computers; and
- (e) training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.

2. For greater certainty, services enabled by computer and related services, other than those listed in paragraph 1, shall not be regarded as computer and related services in themselves.

SECTION A: Legislation of the Parties

**Legislation of the United Kingdom**

[Placeholder]

**Legislation of the EU**

- (a) Regulation (EU) No 1151/2012<sup>35</sup> of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs and its implementing rules;
- (b) Regulation (EU) No 1308/2013<sup>36</sup> of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), in particular Articles 92 to 111 on designations of origin and geographical indications, and Articles 112 to 116 on traditional terms, and its implementing rules;
- (c) Regulation (EU) 2019/787<sup>37</sup> of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008, and its implementing rules;
- (d) Regulation (EU) No 251/2014<sup>38</sup> of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, and its implementing rules.

*SECTION B: Elements for registration and control of geographical indications as referred to in paragraphs 1 and 2 of Article IP.32 [Domestic legislation]*

- 1. A register listing geographical indications protected in the territory;
- 2. An administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of one of the Parties, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
- 3. A requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down, which can only be amended by due administrative process;
- 4. Control provisions applying to production;
- 5. Enforcement of the protection of registered names by appropriate administrative action by the public authorities;

---

<sup>35</sup> OJ L 343, 14.12.2012, p. 1.

<sup>36</sup> OJ L 347, 20.12.2013, p.671.

<sup>37</sup> OJ L 130, 17.5.2019, p. 1–54.

<sup>38</sup> OJ L 84, 20.3.2014, p. 14.

6. Legal provisions laying down that a registered name may be used by any operator marketing products conforming to the corresponding specification;
7. Provisions concerning the registration, which may include refusal of registration, of terms homonymous or partly homonymous with registered terms, terms customary in common language as the common name for goods, terms comprising or including the names of plant varieties and animal breeds. Such provisions shall take into account the legitimate interests of all parties concerned;
8. Rules concerning relation between geographical indications and trade marks providing for a limited exception to the rights conferred under trade mark law to the effect that the existence of a prior trade mark shall not be a reason to prevent the registration and use of a name as a registered geographical indication except where by reason of the trade mark's renown and the length of time it has been used, consumers would be misled by the registration and use of the geographical indication on products not covered by the trade mark;
9. A right for any producer established in the area who submits to the system of controls to produce the product labelled with the protected name provided the said producer complies with the product specifications;
10. An opposition procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

*ANNEX IP-B: GEOGRAPHICAL INDICATIONS: OPPOSITION PROCEDURE*

Criteria to be included in the opposition procedure as referred to in paragraph 2 of Article IP.33  
[Recognition of geographical indications]

1. List of name(s) with the corresponding transcription into Latin or [script of the third country concerned] characters;
2. The product type;
3. An invitation:
  - (e) in the case of the European Union, to any natural or legal persons except those established or resident in the United Kingdom,
  - (f) in the case of the United Kingdom, to any natural or legal persons except those established or resident in a Member State of the European Union,
  - (g) having a legitimate interest, to submit objections to such protection by lodging a duly substantiated statement;
4. Statements of opposition must reach the European Commission or [...] within 2 months from the date of the publication of the information notice;
5. Statements of opposition shall be admissible only if they are received within the time limit set out above and if they show that the protection of the name proposed would:
  - (a) conflict with the name of a plant variety, including a wine grape variety or an animal breed and as a result is likely to mislead the consumer as to the true identity of the product;
  - (b) be a wholly or partially homonymous name which misleads the consumer into believing that products come from another territory;
  - (c) in the light of a trade mark's reputation and renown and the length of time it has been used, be liable to mislead the consumer as to the true identity of the product;
  - (d) jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication of this notice;
  - (e) or lead to the protection as a geographical indication of a name which is considered to be generic.
6. The criteria referred to above shall be evaluated in relation to the territory of (the European Union, which in the case of intellectual property rights refers only to the territory or territories where the said rights are protected) / (of the United Kingdom).

*ANNEX IP-C: GEOGRAPHICAL INDICATIONS: LISTS*

Geographical indications for products as referred to in paragraph 1 of Article IP.33 [Recognition of geographical indications]

*SECTION A: Geographical indications for products of the European Union to be protected in the United Kingdom*

[Placeholder]

*SECTION B: Geographical indications for products of the United Kingdom to be protected in the European Union*

[Placeholder]

DRAFT



*ANNEX PPROC-1: PUBLIC PROCUREMENT*

*SECTION A: Relevant provisions of the WTO Government Procurement Agreement*

Articles I to III, IV.1.a, IV.2 to IV.7, VI to XV, XVI.1 to XVI.3, XVII and XVIII.

*SECTION B: Market access commitments*

***Sub-section B1: European Union***

[Placeholder]

***Sub-section B2: United Kingdom***

[Placeholder]

DRAFT

*ANNEX MOBI-1 - JOINT DECLARATIONS RELEVANT TO ARTICLE MOBI.4*

JOINT DECLARATION WITH REGARD TO ICELAND, NORWAY, SWITZERLAND AND LIECHTENSTEIN

The Parties take note of the close relationship between the European Union and Norway, Iceland, Switzerland and Liechtenstein, particularly by virtue of the Agreements of 18 May 1999 and 26 October 2004 concerning the association of those countries with the implementation, application and development of the Schengen acquis.

In such circumstances it is desirable that the authorities of Norway, Iceland, Switzerland, and Liechtenstein, on the one hand, and the United Kingdom, on the other hand, conclude, without delay, bilateral agreements on the short-stay visa waiver in terms similar to those of this Agreement.

JOINT DECLARATION ON THE INTERPRETATION OF THE CATEGORY OF PERSONS TRAVELLING FOR THE PURPOSE OF CARRYING OUT A PAID ACTIVITY AS PROVIDED FOR IN ARTICLE M3(3) OF THIS AGREEMENT

Desiring to ensure a common interpretation, the Parties agree that, for the purposes of this Agreement, the category of persons carrying out a paid activity covers persons entering for the purpose of carrying out a gainful occupation or remunerated activity in the territory of the other Party as an employee or as a service provider.

This category should not cover:

- businesspersons, i.e. persons travelling for the purpose of business deliberations (without being employed in the country of the other Party),
- sportspersons or artists performing an activity on an ad-hoc basis,
- journalists sent by the media of their country of residence, and,
- intra-corporate trainees.

The implementation of this Declaration shall be monitored by [the Joint Committee?], which may propose modifications when, on the basis of the experiences of the Contracting Parties, it considers it necessary.

JOINT DECLARATION ON THE INTERPRETATION OF THE PERIOD OF 90 DAYS IN ANY 180-DAY PERIOD AS SET OUT IN ARTICLE M3 OF THIS AGREEMENT

The Parties understand that the maximum period of at least 90 days in any 180-day period as provided by Article MOBI.4 of this Agreement means either a continuous visit or several consecutive visits, the total duration of which does not exceed 90 days in any 180-day period.

The notion of 'any' implies the application of a moving 180-day reference period, looking backwards at each day of the stay into the last 180-day period, in order to verify if the 90 days in any 180-day period requirement continues to be fulfilled. Inter alia, it means that an absence for an uninterrupted period of 90 days allows for a new stay for up to 90 days.

## ANNEX AFSAF-1: AIRWORTHINESS AND ENVIRONMENT CERTIFICATION

### SECTION A: General provisions

#### Article 1: Purpose and scope

1. This Annex is developed for the implementation of cooperation in the following areas, in accordance with paragraph 2 of Article 3 of this Annex, describing the terms, conditions and methods for reciprocal acceptance of findings of compliance and certificates:

- (f) the airworthiness certificates and monitoring of civil aeronautical products referred to in subparagraph 1(a) of Article 3 of this Annex;
- (g) environmental certificates and testing of civil aeronautical products referred to in subparagraph 1(b) of Article 3 of this Annex; and
- (h) the design and production certificates and monitoring of design and production organisations referred to in subparagraph 1(c) of Article 3 of this Annex;

2. Notwithstanding paragraph 1, used civil aeronautical products, other than used aircraft, are excluded from the scope of this Annex.

#### Article 2: Definitions

For the purposes of this Annex:

- (h) “authorised release certificate” means a certificate issued by an approved organisation or a competent authority of the exporting Party as a form of recognition that a new civil aeronautical product, other than an aircraft, conforms to a design approved by the exporting Party and is in a condition for safe operation.
- (i) “certificating authority” means the technical agent of the exporting Party that issues a design certificate for a civil aeronautical product in its capacity as an authority carrying out the State of Design responsibilities set out in Annex 8 to the Convention on International Civil Aviation.
- (j) “design certificate” means a certificate issued by the technical agent or an approved organisation of a Party as a form of recognition that the design or change to a design of a civil aeronautical product complies with airworthiness requirements, as applicable, and environmental protection requirements, in particular concerning environmental characteristics set out in laws, regulations and administrative provisions of that Party.
- (k) “design-related operational requirements” means the operational, including environmental, requirements affecting either the design features of the civil aeronautical product or data on the design relating to the operations, or the maintenance of that product, which make it eligible for a particular kind of operation.
- (l) “export” means the process by which a civil aeronautical product is released from the regulatory system for civil aviation safety of a Party to that of the other Party.
- (m) “export certificate of airworthiness” means a certificate issued by the competent authority of the exporting Party or, for used aircraft, by the competent authority of the State of Registry from which the product is exported as a form of recognition that an aircraft conforms to the applicable airworthiness and environmental protection requirements notified by the importing Party.

- (n) “exporting Party” means the Party from whose regulatory system for civil aviation safety a civil aeronautical product is exported.
- (o) “import” means the process by which an exported civil aeronautical product from the regulatory system for civil aviation safety of a Party is introduced into that of the other Party.
- (p) “importing Party” means the Party into whose regulatory system for civil aviation safety a civil aeronautical product is imported.
- (q) “major change” means all changes in type design other than “minor change”.
- (r) “minor change” means a change in type design that has no appreciable effect on the mass, balance, structural strength, reliability, operational characteristics, environmental characteristics, or other characteristics affecting the airworthiness of the civil aeronautical product.
- (s) “operational suitability data” means the required set of data to support and allow the type-specific operational aspects of certain types of aircraft that are regulated under the regulatory system for civil aviation safety of the Union. It must be designed by the type certificate applicant or holder for the aircraft and be part of the type certificate. Under the regulatory system for civil aviation safety of the Union, an initial application for a type certificate or restricted type certificate shall include, or be subsequently supplemented by, the application for approval of operational suitability data, as applicable to the aircraft type.
- (t) “production approval” means a certificate issued by the competent authority of a Party to a manufacturer which produces civil aeronautical products, as a form of recognition that the manufacturer complies with applicable requirements set out in laws, regulations and administrative provisions of that Party for the production of the particular civil aeronautical products.
- (u) “stand-alone production approval” means a production approval issued to a manufacturer of a civil aeronautical product which is not an extension of the production approval to any affiliated entity of the manufacturer.
- (v) “technical implementation procedures” means the implementation procedures for this Annex developed by the technical agents of the Parties in accordance with paragraph 5 of Article 3 of this Annex.
- (w) “validating authority” means the technical agent of the importing Party that automatically accepts or validates, as specified in this Annex, a design certificate issued by the certifying authority.

## *SECTION B: Certification Oversight Board*

### Article 3: Establishment and composition

1. The Certification Oversight Board, accountable to the Specialised Committee on Aviation Safety, is hereby established under the co-chairmanship of the technical agents of the Parties, as a technical coordination body responsible for the effective implementation of this Annex. It shall be composed of representatives from the technical agent of each Party and may invite additional participants to facilitate the fulfilment of its mandate.

2. The Certification Oversight Board shall meet at regular intervals upon the request of either technical agent, and take decisions and make recommendations by consensus. It shall develop and adopt its rules of procedure.

#### Article 4: Mandate

The mandate of the Certification Oversight Board shall include in particular:

- (a) developing, adopting, and revising the technical implementation procedures referred to in Article 6 of this Annex.
- (b) sharing information on major safety concerns and, where appropriate, developing action plans to address them;
- (c) resolving technical issues falling within the responsibilities of the competent authorities and affecting the implementation of this Annex;
- (d) where appropriate, developing effective means for cooperation, technical support and exchange of information regarding safety and environmental protection requirements, certification systems, and quality management and standardisation systems;
- (e) proposing amendments to this Annex to the Specialised Committee on Aviation Safety;
- (f) in accordance with the provisions of Article 28 of this Annex, defining procedures to ensure the continued confidence of each Party in the reliability of the other Party's processes for findings of compliance;
- (g) analysing and taking action regarding the implementation of the procedures referred to in subparagraph (f); and
- (h) reporting unresolved issues to the Specialised Committee on Aviation Safety and ensuring the implementation of decisions taken by the Specialised Committee on Aviation Safety regarding this Annex.

#### *SECTION C: Implementation*

##### Article 5: Competent authorities for design certification, production certification and export certificates

1. Competent authorities for design certification are:

- (a) for the Union: the European Union Aviation Safety Agency; and
- (b) for the United Kingdom: the Civil Aviation Authority of the United Kingdom

2. Competent authorities for production certification and export certificates are:

- (a) for the Union: the Union Aviation Safety Agency and the competent authorities of the Member States of the European Union. As regards an export certificate for used aircraft, it is the competent authority of the State of Registry for the aircraft from which the aircraft is exported; and
- (b) for the United Kingdom: the Civil Aviation Authority of the United Kingdom

## Article 6: Technical implementation procedures

1. The technical implementation procedures shall be developed by the technical agents of the Parties through the Certification Oversight Board in order to provide specific procedures to facilitate the implementation of this Annex, by defining the procedures for communication activities between the competent authorities of the Parties.
2. The technical implementation procedures shall also address the differences between the Parties' civil aviation standards, rules, practices, procedures and systems related to the implementation of this Annex, as provided in paragraph 5 of Article 3 of this Annex.

## Article 7: Exchange and protection of confidential and proprietary data and information

1. Data and information exchanged in the implementation of this Annex shall be subject to Article 11 of this Annex.
2. Data and information exchanged during the validation process shall be limited in nature and content to what is necessary for the purpose of compliance demonstration with applicable technical requirements, as detailed in the technical implementation procedures.
3. Any disagreement with regard to a data and information exchange between the competent authorities shall be handled as detailed in the technical implementation procedures. Each Party shall retain the right to refer the disagreement to the Certification Oversight Board for resolution.

## *SECTION D: Design certification*

### Article 8: General principles

1. This section addresses all design certificates and changes thereof, where applicable, within the scope of this Annex, in particular:
  - (a) type certificates;
  - (b) supplemental type certificates;
  - (c) repair design approvals;
  - (d) technical standard order approvals; and
  - (e) restricted type certificates.
2. The validating authority shall either validate, having regard to the level of involvement referred to in Article 12 of this Annex, or automatically accept a design certificate or a change that has been, or is in the process of being, issued or approved by the certifying authority, in accordance with the terms and conditions set out in this Annex and as detailed in the technical implementation procedures, including its modalities of automatic acceptance and validation of certificates.
3. For the implementation of this Annex, each Party shall ensure that in its regulatory system for civil aviation safety, the demonstration of capability of any design organisation to assume its responsibilities is sufficiently controlled through a system of certification for design organisations.

## Article 9: Validation process

1. An application for the validation of a design certificate of a civil aeronautical product shall be made to the validating authority through the certifying authority as detailed in the technical implementation procedures.
2. The certifying authority shall ensure that the validating authority receives all the relevant data and information necessary for the validation of the design certificate, as detailed in the technical implementation procedures.
3. Upon receiving the application for the validation of the design certificate, the validating authority shall determine the certification basis for the validation in accordance with Article 11 of this Annex, as well as the level of involvement of the validating authority in the validation process in accordance with Article 12 of this Annex.
4. The validating authority shall, as detailed in the technical implementation procedures, base its validation to the maximum extent practicable on the technical evaluations, tests, inspections, and findings of compliance made by the certifying authority.
5. The validating authority shall, after examining relevant data and information provided by the certifying authority, issue its design certificate for the validated civil aeronautical product (hereinafter referred to as “validated design certificate”) when:
  - (a) it is confirmed that the certifying authority has issued its own design certificate for the civil aeronautical product;
  - (b) it has been stated by the certifying authority that the civil aeronautical product complies with the certification basis referred to in Article 11 of this Annex;
  - (c) all issues raised during the validation process conducted by the validating authority have been resolved; and
  - (d) additional administrative requirements, as detailed in the technical implementation procedures, have been met by the applicant.
6. Each Party shall ensure that in order to obtain and maintain a validated design certificate, the applicant holds and retains at the disposal of the certifying authority all relevant design information, drawings and test reports, including inspection records for the certified civil aeronautical product, in order to provide the information necessary to ensure the continued airworthiness and compliance with applicable environmental protection requirements of the civil aeronautical product.

## Article 10: Modalities of the validation of design certificates

Design certificates, except minor changes, issued by the technical agent of the United Kingdom as certifying authority shall be validated by the Union as validating authority, having regard to the level of involvement referred to in Article 12 of this Annex.

## Article 11: Certification basis for the validation

1. For the purpose of validating a design certificate of a civil aeronautical product, the validating authority shall refer to the following requirements set out in laws, regulations and administrative provisions of its Party in determining the certification basis:

- (a) the airworthiness requirements for a similar civil aeronautical product that were in effect on the effective application date established by the certifying authority, and complemented when applicable by additional technical conditions as detailed in the technical implementation procedures; and
- (b) the environmental protection requirements for the civil aeronautical product that were in effect on the date of the application for the validation to the validating authority.

2. The validating authority shall specify, when applicable, any:

- (a) exemption to the applicable requirements;
- (b) deviation from the applicable requirements; or
- (c) compensating factors that provide an equivalent level of safety when applicable requirements are not complied with.

3. In addition to the requirements specified in paragraphs 1 and 2 of this Article, the validating authority shall specify any special condition to be applied if the related airworthiness codes, laws, regulations and administrative provisions do not contain adequate or appropriate safety requirements for the civil aeronautical product, because:

- (a) the civil aeronautical product has novel or unusual design features relative to the design practices on which the applicable airworthiness codes, laws, regulations and administrative provisions are based;
- (b) the intended use of the civil aeronautical product is unconventional; or
- (c) experience obtained from other similar civil aeronautical products in service or civil aeronautical products having similar design features, has shown that unsafe conditions may develop.

4. When specifying exemptions, deviations, compensating factors or special conditions, the validating authority shall give due consideration to those applied by the certifying authority and they shall not be more demanding for the civil aeronautical products to be validated than they would be for its own similar products. The validating authority shall notify the certifying authority of any such exemptions, deviations, compensating factors or special conditions.

#### Article 12: Level of involvement of the validating authority

1. The level of involvement of the validating authority of a Party during the validation process referred to in Article 9 of this Annex and as detailed in the technical implementation procedures, shall be mainly determined by:

- (a) the experience and records of the competent authority of the other Party as certifying authority;
- (b) the experience already gained by this validating authority during previous validation exercises with the competent authority of the other Party;
- (c) the nature of the design to be validated,
- (d) the performance and experience of the applicant with the validating authority; and



(e) the outcome of qualification requirements assessments referred to in Articles 27 and 28 of this Annex.

2. The validating authority shall exercise special procedures and scrutiny, in particular regarding the certifying authority's processes and methods, during any first validation occurring after 30 September 2004, of a given product category, as detailed in the technical implementation procedures.

3. The effective implementation of the principles specified in paragraphs 1 and 2 of this Article shall be regularly measured, monitored and reviewed by the Certification Oversight Board, using metrics as detailed in the technical implementation procedures.

#### Article 13: Simplified acceptance process

1. For the purpose of this Article, 'simplified acceptance' shall mean the recognition of a design certificate of one Party by the other Party in a simplified process without validation activities and without issuing a corresponding certificate by that other Party.

2. Design certificates issued by the technical agent of the Union as certifying authority or by an approved organisation under the Union law shall be accepted in a simplified process by the technical agent of the United Kingdom as validating authority.

3. Minor changes and minor repairs approved by the technical agent of the United Kingdom as certifying authority or by an approved organisation under the law of the United Kingdom shall be accepted in a simplified process by the technical agent of the Union as validating authority.

#### Article 14: Implementation provision for Articles 10 and 13

1. The minor change or major change classifications shall be made by the certifying authority in accordance with the definitions set out in this Annex and interpreted in accordance with the applicable rules and procedures of the certifying authority.

2. For classifying a supplemental type certificate or major change as significant or non-significant, the certifying authority shall consider the change in the context of all previous relevant design changes and all related revisions to the applicable certification specifications incorporated in the type certificate for the civil aeronautical product. Changes that meet either of the following criteria are automatically considered as significant:

- (a) the general configuration or the principles of construction are not retained; or
- (b) the assumptions used for certification of the product to be changed do not remain valid.

#### Article 15: Transfer of a design certificate

In the event that a design certificate holder transfers its design certificate to another entity, the certifying authority responsible for the design certificate shall promptly notify the validating authority of the transfer and apply the procedure related to the transfer of design certificates as detailed in the technical implementation procedures.

#### Article 16: Design-related operational requirements

1. The technical agents shall ensure that, where necessary, data and information related to design-related operational requirements shall be exchanged during the validation process.

2. Subject to decision by the technical agents for some design-related operational requirements, the validating authority may accept the compliance statement of the certificating authority through the validation process.

#### Article 17: Operational documents and data related to the type

1. Some type-specific sets of operational documents and data, including operational suitability data in the Union system and the equivalent data in the United Kingdom system, provided by the type certificate holder, shall be approved or accepted by the certificating authority and, where necessary, be exchanged during the validation process.

2. Operational documents and data referred to in paragraph 1 of this Article may be either automatically accepted or validated by the validating authority as detailed in the technical implementation procedures.

#### Article 18: Concurrent validation

When decided by the applicant and the technical agents, a concurrent validation process may be used, where appropriate and as detailed in the technical implementation procedures.

#### Article 19: Continuing airworthiness

1. The competent authorities shall take action to address unsafe conditions in civil aeronautical products for which they are the certificating authority.

2. Upon request, a competent authority of a Party shall, in respect of civil aeronautical products designed or manufactured under its regulatory system, assist the competent authority of the other Party in determining any action considered to be necessary for the continued airworthiness of the civil aeronautical products.

3. When in-service difficulties or other potential safety issues affecting a civil aeronautical product within the scope of this Annex lead to an investigation conducted by the technical agent of a Party that is the certificating authority for the civil aeronautical product, the technical agent of the other Party shall, upon request, support that investigation, including by providing relevant information reported by relevant entities on failures, malfunctions, defects or other occurrences affecting that civil aeronautical product.

4. The reporting obligations of the design certificate holders to the certificating authority and the information exchange mechanism established by this Annex shall be considered to fulfil the obligation of each design certificate holder to report failures, malfunctions, defects or other occurrences affecting that civil aeronautical product to the validating authority.

5. Actions to address unsafe conditions and exchange of safety information referred to in paragraphs 1 to 4 of this Article shall be detailed in the technical implementation procedures.

6. The technical agent of a Party shall keep the technical agent of the other Party informed of all its mandatory continuing airworthiness information in relation to civil aeronautical products designed or manufactured under its oversight system, and which are within the scope of this Annex.

7. Any changes to the airworthiness status of a certificate issued by a Party's technical agent shall be communicated timely to the other Party's technical agent.

### *SECTION E: Production certification*

## Article 20: Acceptance of findings of compliance regarding production certification and oversight

1. For the issuance and continued validity of production organisation approvals issued by the technical agent of one Party to an organisation located in the territory of the other Party;

(a) both Parties' technical agents shall accept inspections and monitoring of production organisations performed by the other technical agent, or where applicable, the competent authorities of the Union, for acceptance of findings of compliance with their respective requirements, subject to the provisions of this Annex and, where applicable, the technical implementation procedures;

(b) a production organisation approval issued by one technical agent under this Annex, shall not exceed the scope of the ratings and limitations contained in the approval issued by the other technical agent or, where applicable, the competent authorities of the Union for the same organisation;

(c) the Technical agents, or where applicable, the competent authorities of the Union shall:

- i. provide recommendations for the initial issuance of a production organisation approval to one another;
- ii. perform surveillance and provide reports regarding the continued compliance of production organisations with the requirements of the other Party to one another.

(d) the technical agents, or where applicable, the competent authorities of the Union, shall provide upon request technical assistance in production activities to each other for the purposes of this Annex. Such areas of assistance may include, but are not limited to:

- i. conducting and reporting on investigations upon request;
- ii. obtaining and providing data for reports where requested;

(e) the technical agents, or where applicable, the competent authorities of the Union may decline to provide such technical assistance due to lack of resource availability, because the activity is not within the scope of this Annex, or where there is no regulatory involvement with the facility.

(f) the technical agents may conduct independent inspections of production organisations when specific safety concerns warrant it.

## Article 21: Extension of production approval and stand-alone production approval

A production approval issued by the competent authority of the exporting Party to a manufacturer primarily located in the territory of that exporting Party may be extended to include manufacturing sites and facilities of the manufacturer located in the territory of the other Party or in the territory of a third country, irrespective of the legal status of these manufacturing sites and facilities, and irrespective of the type of civil aeronautical product manufactured in these sites and facilities. In this case, the competent authority of the exporting Party shall remain responsible for the oversight of these manufacturing sites and facilities and the competent authority of the importing Party shall not issue its own production approval to those manufacturing sites and facilities for the same civil aeronautical product.

## Article 22: Interface between the production approval holder and the design certificate holder

1. In cases where the production approval holder for a civil aeronautical product is regulated by the competent authority of a Party, and the design certificate holder for the same civil aeronautical product is regulated by the competent authority of the other Party, the competent authorities of the Parties shall establish procedures to define the responsibilities of each Party to control the interface between the production approval holder and the design certificate holder.

2. For the purpose of export of civil aeronautical products within the framework of this Annex, when the design certificate holder and the production approval holder are not the same legal entity, the competent authorities of the Parties shall ensure that the design certificate holder establishes proper arrangements with the production approval holder to ensure satisfactory coordination between design and production and the proper support of the continued airworthiness of the civil aeronautical product.

## *SECTION F: Export certificates*

### Article 23: Scope

This Annex addresses the following export certificates within the scope of this Annex as detailed in the technical implementation procedures:

- (a) EASA Form 52 (aircraft statement of conformity) for new aircraft;
- (b) export certificate of airworthiness for used aircraft; and
- (c) EASA Form 1 (authorised release certificate) for new civil aeronautical products other than aircraft.

### Article 24: Issuance of an export certificate

1. When issuing an export certificate, the competent authority or production approval holder of the exporting Party shall ensure that such civil aeronautical product;

- (a) conforms to the design automatically accepted or validated, or certified by the importing Party in accordance with this Annex and as detailed in the technical implementation procedures;
- (b) is in a condition for safe operation;
- (c) meets all additional requirements notified by the importing Party; and
- (d) as regards civil aircraft, aircraft engines and aircraft propellers, complies with the applicable mandatory continuing airworthiness information, including airworthiness directives of the importing Party, as notified by that Party.

2. When issuing an export certificate of airworthiness for a used aircraft registered in the exporting Party, in addition to the requirements referred to in (a) to (d) in paragraph 1 of this Article, the competent authority of the exporting Party shall ensure that such aircraft has been properly maintained using approved procedures and methods of the exporting Party during its service life, as evidenced by logbooks and maintenance records.

Article 25: Acceptance of an export certificate for a new civil aeronautical product

1. The competent authority of the importing Party shall accept an export certificate issued by the competent authority or a production approval holder of the exporting Party for a civil aeronautical product, in accordance with the terms and conditions set out in this Annex and as detailed in the technical implementation procedures.

Article 26: Acceptance of an export certificate of airworthiness for a used aircraft

1. The competent authority of the importing Party shall accept an export certificate of airworthiness issued by the competent authority of the exporting Party for a used aircraft in accordance with the terms and conditions set out in this Annex and the technical implementation procedures only if the holder of the type certificate or a restricted type certificate exists for the used aircraft to support continued airworthiness of that type of aircraft.

2. For an export certificate of airworthiness for a used aircraft manufactured under the production oversight of the exporting Party to be accepted in accordance with paragraph 1 of this Article, the competent authority of the exporting Party shall assist, upon request, the competent authority of the importing Party in obtaining data and information regarding:

- (a) the configuration of the aircraft at the time of dispatch from the manufacturer; and
- (b) subsequent changes and repairs applied to the aircraft that it has approved.

3. The importing Party may request inspection and maintenance records as detailed in the technical implementation procedures.

4. If, in the process of assessing the airworthiness status of a used aircraft considered for export, the competent authority of the exporting Party is unable to satisfy all of the requirements specified in paragraph 2 of Article 24 of this Annex and paragraphs 1 and 2 of this Article, it shall:

- (a) notify the competent authority of the importing Party;
- (b) coordinate with the competent authority of the importing Party, as detailed in the technical implementation procedures, their acceptance or rejection of the exceptions to the applicable requirements; and
- (c) keep a record of any accepted exceptions when exporting.

*SECTION G: Qualification of competent authorities*

Article 27: Qualification requirements for the acceptance of findings of compliance and certificates

Each Party shall maintain a structured and effective certification and oversight system for the implementation of this Annex, including:

- (a) a legal and regulatory framework, ensuring in particular regulatory powers over entities regulated under the regulatory system for civil aviation safety of the Party;
- (b) an organisational structure, including a clear description of responsibilities;
- (c) sufficient resources, including qualified staff with sufficient knowledge, experience and training;
- (d) adequate processes documented in policies and procedures;

- (e) documentation and records; and
- (f) an established inspection programme ensuring uniform level of implementation of the legal and regulatory framework among the various components of the oversight system.

#### Article 28: Continued qualifications of the competent authorities

1. In order to maintain mutual confidence in each other's regulatory systems concerning the implementation of this Annex so that they ensure a sufficiently equivalent level of safety, the technical agent of each Party shall regularly assess the other Party's competent authorities' compliance with the qualification requirements referred to in Article 27 of this Annex. The modalities of such continued mutual assessments shall be detailed in the technical implementation procedures.
2. The competent authority of a Party shall cooperate with the competent authority of the other Party whenever such assessments are required and ensure that regulated entities subject to its oversight provide access to the technical agents of the Parties.
3. If the technical agent of either Party believes that the technical competence of a competent authority of the other Party is no longer adequate, or that the acceptance of findings of compliance made or certificates issued by that competent authority should be suspended as the other Party's systems concerning the implementation of this Annex no longer ensure a sufficiently equivalent level of safety to permit such acceptance, the technical agents of the Parties shall consult in order to identify remedial actions.
4. If mutual confidence is not restored through mutually acceptable means, the technical agent of each Party may refer the matter referred to in paragraph 3 of this Article to the Certification Oversight Board.
5. If the matter is not resolved by the Certification Oversight Board, each Party may refer the matter referred to in paragraph 3 of this Article to the Specialised Committee on Aviation Safety.

#### *SECTION H: Communications, consultations and support*

##### Article 29: Communications

Subject to the exceptions decided by the technical agents of the Parties on a case-by case basis, all communications between the competent authorities of the Parties, including documentation as detailed in the technical implementation procedures, shall be made in the English language.

##### Article 30: Technical consultations

1. The technical agents of the Parties shall address issues concerning the implementation of this Annex through consultations.
2. If a mutually acceptable solution is not reached through the consultations held in accordance with paragraph 1 of this Article, the technical agent of each Party may refer the issue referred to in paragraph 1 of this Article to the Certification Oversight Board.
3. If the issue is not resolved by the Certification Oversight Board, each Party may refer the issue referred to in paragraph 1 of this Article to the Specialised Committee on Aviation Safety.

### Article 31: Support for certification and continued airworthiness oversight activities

Upon request, after mutual consent, and as resources permit, the competent authority of a Party may provide technical support, data and information to the competent authority of the other Party in certification and continued airworthiness oversight activities related to design, production and environmental protection certification. The support to be provided and the process for providing such support shall be detailed in the technical implementation procedures.

DRAFT

ANNEX ROAD-1: TRANSPORT OF GOODS BY ROAD

*[This annex lists the headlines of the rules which will have to be complied with by both Parties. The text needs to be worked out further with the substance of the rules]*

**PART A – Requirements for road haulage operators to hold a valid licence in accordance with Article ROAD.5**

1. Until [date]:

(a) Effective and stable establishment

[PLACEHOLDER]

(b) Good repute

[PLACEHOLDER]

(c) Financial standing

[PLACEHOLDER]

(d) Professional competence

[PLACEHOLDER]

(e) Transport manager

[PLACEHOLDER]

2. From [date]:

(a) Effective and stable establishment

[PLACEHOLDER]

(b) Good repute

[PLACEHOLDER]

(c) Financial standing

[PLACEHOLDER]

(d) Professional competence

[PLACEHOLDER]

(e) Transport manager

[PLACEHOLDER]

[Specific date for the application of the rules to light commercial vehicles exceeding 2.5 tonnes of permissible laden mass]



*PART B – Requirements for drivers involved in the transport of goods in accordance with Article ROAD.7*

1. Certificate of professional competence

(a) Initial qualification

[PLACEHOLDER]

(b) Periodic training

[PLACEHOLDER]

2. Driving times, breaks and rest periods

(a) Maximum daily and weekly driving times

[PLACEHOLDER]

(b) Minimum breaks

[PLACEHOLDER]

(c) Minimum daily and weekly rest periods

[PLACEHOLDER]

(d) Temporary exceptions in relation to driving time, rest periods and breaks

[PLACEHOLDER]

3. Working time and breaks

(a) Maximum weekly working time

[PLACEHOLDER]

(b) Breaks

[PLACEHOLDER]

(c) Night work

[PLACEHOLDER]

4. Use of tachographs by drivers

(a) Use of driver cards and record sheets including in cases of damaged driver cards and record sheets

[PLACEHOLDER]

- (b) Records to be carried by the driver

[PLACEHOLDER]

- (c) Procedures in the event of malfunctioning equipment

[PLACEHOLDER]

Until 30 June 2026, the rules under Point 2, 3 and 4 shall apply to drivers performing transport of goods by road with a vehicle, including any trailer or semi-trailer, the permissible laden mass of which exceeds 3.5 tonnes.

From 1 July 2026, the rules under Point 2, 3 and 4 shall apply to drivers performing transport of goods by road with a vehicle, including any trailer, or semi-trailer, the permissible laden mass of which exceeds 2.5 tonnes.

*PART C – Requirements for vehicles used for the transport of goods in accordance with Article ROAD.8*

1. Weights & Dimensions

- (a) Maximum authorised weights and dimensions and related characteristics of vehicles

[PLACEHOLDER]

- (b) Proof of compliance with the maximum authorized weights and dimensions

[PLACEHOLDER]

2. Tachographs and drivers' cards

*General requirements*

- a) Requirements and data to be recorded by tachographs

[PLACEHOLDER]

- b) Rules on data protection in relation to data of tachographs

[PLACEHOLDER]

- c) Installation and repair, and inspection of tachographs

[PLACEHOLDER]

- d) Correct use, functioning and maintenance of tachographs by transport undertakings

[PLACEHOLDER]

- e) Obligation for companies to download and keep record sheets

[PLACEHOLDER]

- f) Approval of fitters, workshops and vehicle manufacturers

[PLACEHOLDER]

*Specific requirements (technical specifications)*

g) Analogue tachograph

[PLACEHOLDER]

h) Digital tachograph first generation until 30 September 2011

[PLACEHOLDER]

i) Digital tachograph second generation applicable from 1 October 2011

[PLACEHOLDER]

j) Digital tachograph third generation applicable from 1 October 2012

[PLACEHOLDER]

k) Smart tachograph first generation from 15 June 2019

[PLACEHOLDER]

l) From [date], smart tachograph second generation allowing to record:

- (i) the position of the vehicle each time it crosses the border between the territories of the Parties;
- (ii) the position of the vehicle each time it performs loading and unloading activities;
- (iii) if the vehicle has been employed for the transport of goods or passengers.

[PLACEHOLDER]

Until 30 June 2026, tachograph and drivers' cards requirement shall apply to vehicles including any trailer, or semi-trailer, the permissible laden mass of which exceeds 3.5 tonnes.

From 1 July 2026, tachograph and drivers' cards requirements shall apply to vehicles, including any trailer, or semi-trailer; the permissible mass of which exceeds 2,5 tonnes.

No later than three years after the end of the year of entry into force of the detailed provisions laying down specifications for the requirements referred to in point (l), the vehicles equipped with an analogue or a digital tachograph shall be equipped with a smart tachograph of second generation, complying with those specifications.

No later than four years after the entry into force of the detailed provisions laying down specifications for the requirements referred to in point (l), the vehicles equipped with a smart tachograph of first generation shall be equipped with a smart tachograph of second generation, complying with those specifications.

*ANNEX ENER-1*

LIST OF ENERGY GOODS BY HS CODE

coal (HS code .... ), crude oil (HS code .... ), oil products (HS code .... ), natural gas whether liquefied or not (HS code .... ), hydrogen (HS code ... ) and electrical energy (HS code .... )

LIST OF HYDROCARBONS BY HS CODE

Crude oil (HS code ...), Natural gas (HS code ..)

LIST OF RAW MATERIALS BY HS CODE

[to be further defined, but unprocessed and semi-processed products covered in the following chapters:]

DRAFT

*ANNEX ENER-2: NON APPLICATION OF THIRD PARTY ACCESS AND OWNERSHIP UNBUNDLING TO NEW INFRASTRUCTURE*

1. A party may decide not to apply Article X.17 and Article X.18 (2), (3) and (4) to new infrastructure where:

- (a) The risk attached to the investment in the new infrastructure is such that the investment would not take place unless an exemption is granted;
- (b) the investment enhances competition or security of supply;
- (c) the infrastructure is owned by a natural or legal person which is separate, at least in terms of its legal form, from the system operators in whose systems it is to be built;
- (d) before granting the exemption, the Party has decided on the rules and mechanisms for management and allocation of capacity.

DRAFT

## ANNEX CIVNU-1: REPROCESSING

Whereas Article CIVNU.8 of the Agreement provides that nuclear material subject to this Agreement (hereinafter referred to as NMSA) shall be reprocessed only according to conditions set out in this Annex.

The Parties to this Agreement,

Acknowledging that the separation, storage, transportation and use of plutonium require particular measures to reduce the risk of nuclear proliferation;

Recognizing the role of reprocessing in connection with efficient energy use, management of materials contained in spent fuel or other peaceful non-explosive uses including research;

Desiring predictable and practical implementation of the agreed conditions set out in this Annex, taking into account both their determination to ensure the furtherance of the objective of non-proliferation and the long-term needs of the nuclear fuel cycle programmes of the Parties;

Determined to continue to support the development of international safeguards and other measures relevant to reprocessing and plutonium, including measures to promote proliferation resistance and effective physical protection;

Have agreed as follows:

### Article 1

1. NMSA may be reprocessed subject to the following conditions:

- (a) reprocessing shall take place for the purpose of energy use or management of materials contained in spent fuel, in accordance with the nuclear fuel cycle programme mutually determined through consultation between the competent authorities;
- (b) a description of any proposed nuclear fuel cycle programme, including details on the policy, legal and regulatory framework relevant to reprocessing and plutonium storage, use and transportation shall be provided by the Party envisaging such activities;
- (c) the recovered plutonium shall be stored and used in accordance with the nuclear fuel cycle programme referred to in paragraph (a) above; and
- (d) reprocessing and use of the recovered plutonium for other non-explosive peaceful purposes including research shall take place only under conditions mutually determined in writing between the Parties following consultations pursuant to Article 2 of this Annex.

### Article 2

1. Consultations shall be held between the Parties within forty days of the receipt of a request from either Party:

- (a) to review the operation of the provisions of this Annex;
- (b) to consider amendments to the nuclear fuel cycle programme referred to in Article 1 of this Annex;

- (c) to consider improvements in international safeguards and other control techniques including the establishment of new and generally accepted international mechanisms relevant to reprocessing and plutonium; or
- (d) to consider proposals for reprocessing, use, storage and transportation of the recovered plutonium for other peaceful non-explosive purposes including research.

DRAFT

[Placeholder]

DRAFT



[Placeholder]

DRAFT

[Placeholder]

DRAFT

[Placeholder]

DRAFT

[Placeholder]

DRAFT

[Placeholder]

DRAFT

*Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties*

*TITLE I: GENERAL PROVISIONS*

Article 1: Objective

The objective of this Protocol is to establish the framework for administrative cooperation between the Member States of the Union and the United Kingdom, in order to enable their authorities to assist each other in ensuring compliance with VAT legislation and in protecting VAT revenue and in recovering claims relating to taxes and duties.

Article 2: Scope

1. This Protocol lays down rules and procedures for cooperation:
  - (a) to exchange any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, and combat VAT fraud;
  - (b) for the recovery of:
    - i. claims relating to all taxes and duties of any kind levied by or on behalf of a state or its territorial or administrative subdivisions, including the local authorities, or on behalf of the Union;
    - ii. administrative penalties, fines, fees and surcharges relating to the claims referred to in point (i) imposed by the administrative authorities that are competent to levy the taxes or duties concerned or carry out administrative enquiries with regard to it, or confirmed by administrative or judicial bodies at the request of those administrative authorities;
    - iii. interest and costs relating to the claims referred to in points (i) and (ii).
2. This Protocol shall not affect the application of the rules on administrative cooperation and combating fraud in the field of VAT and assistance for the recovery of claims between Member States of the Union.
3. This Protocol shall not affect the application of the rules on mutual assistance in criminal matters.

Article 3: Definitions

For the purpose of this Protocol, the following definitions shall apply:

- (a) "VAT" means value added tax pursuant to Council Directive 2006/112/EC on the common system of value added tax for the Union and value added tax pursuant to [X] relating to value added tax for the United Kingdom;
- (b) "state" means a Member State of the Union or the United Kingdom;
- (c) "states" means Member States of the Union and the United Kingdom;
- (d) "third country" means a country that is neither a Member State of the Union nor the United Kingdom;

- (e) "competent authority" means the authority designated pursuant to Article 4(1);
- (f) "central liaison office" means the office designated pursuant to Article 4(2) with the principal responsibility for contacts for the application of Title II or Title III;
- (g) "liaison department" means any office other than the central liaison office designated as such pursuant to Article 4(3) to request or grant mutual assistance under Title II or Title III;
- (h) "competent official" means any official designated pursuant to Article 4(4) who can directly exchange information under Title II;
- (i) "requesting authority" means a central liaison office, a liaison department or a competent official who makes a request for assistance under Title II, on behalf of a competent authority;
- (j) "applicant authority" means a central liaison office or a liaison department of a state which makes a request under Title III;
- (k) "requested authority" means the central liaison office, the liaison department or – as far as cooperation under Title II is concerned – the competent official who receives a request from a requesting or an applicant authority;
- (l) "person" means:
  - i. a natural person
  - ii. a legal person;
  - iii. where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person; or  
  
any other legal arrangement of whatever nature and form, having legal personality or not, which conducts transactions which are subject to VAT or is liable for the payment of the claims referred to in Article 2(1)(b);
- (m) "Specialised Committee" means the specialised committee on administrative cooperation in VAT and recovery assistance;
- (n) "administrative enquiry" means all the controls, checks and other action taken by the states in the performance of their duties with a view to ensuring the proper application of the VAT legislation;
- (o) "automatic exchange" means the systematic communication of predefined information to another state, without prior request;
- (p) "spontaneous exchange" means the non-systematic communication, at any moment and without prior request, of information to another state;
- (q) "simultaneous control" means the coordinated checking of the tax situation of a taxable person or two or more related taxable persons organised by two or more states with common or complementary interests;

- (r) "by electronic means" means using electronic equipment for the processing (including digital compression) and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;
- (s) "CCN/CSI network" means the common platform based on the common communication network ('CCN') and common system interface ('CSI'), developed by the Union to ensure all transmissions by electronic means between competent authorities in the area of taxation.

#### Article 4: Organisation

1. Each state shall designate a competent authority responsible for the application of this Protocol.
2. Each state shall designate:
  - (a) one central liaison office with the principal responsibility for the application of Title II of this Protocol, and
  - (b) one central liaison office with the principal responsibility for the application of Title III of this Protocol,
3. Each competent authority may designate, directly or by delegation:
  - (a) liaison departments to exchange directly information under Title II of this Protocol;
  - (b) liaison departments to request or grant mutual assistance under Title III of this Protocol, in relation to their specific territorial or operational competences.
4. Each competent authority may designate, directly or by delegation, competent officials who can directly exchange information on the basis of Title II of this Protocol.
5. The central liaison offices shall keep the list of liaison departments and competent officials up-to-date and make it available to the other central liaison offices.
6. Where a liaison department or a competent official sends or receives a request for assistance under this Protocol, it shall inform its central liaison office thereof.
7. Where a central liaison office, a liaison department or a competent official receives a request for mutual assistance requiring action outside its competence, it shall forward the request without delay to the competent central liaison office or liaison department, and shall inform the requesting or applicant authority thereof. In such a case, the period laid down in Article 8 shall start the day after the request for assistance has been forwarded to the competent central liaison office or the competent liaison department.
8. Each state shall inform the European Commission of its competent authority for the purposes of this Protocol within one month of the signature of this Agreement and of any change thereof without delay. The European Commission keeps the list of competent authorities updated and makes it available to the Specialised Committee.



## Article 5: Service level agreement

A service level agreement ensuring the technical quality and quantity of the services for the functioning of the communication and information exchange systems shall be concluded according to a procedure established by the Specialised Committee referred to in Article 39.

## Article 6: Confidentiality and protection of personal data

1. Any information obtained by a state under this Protocol shall be treated as confidential and protected in the same manner as information obtained under its domestic law and, to the extent necessary for the protection of personal data, in accordance with Regulations (EU) 2016/679 and (EU) 2018/1725 and safeguards which may be specified by the state supplying the information as required under its law.

2. Such information may be disclosed to persons or authorities (including courts and administrative or supervisory bodies) concerned with the application of VAT laws and for the purpose of a correct assessment of VAT as well as for the purpose of applying enforcement including recovery or precautionary measures with regard to claims referred to in Article 2(1)(b).

3. The information referred to in paragraph 1 may also be used for assessment of other taxes and for assessment and enforcement, including recovery or precautionary measures, with regard to claims relating to compulsory social security contributions. If the information exchanged reveals or helps to prove the existence of breaches of the tax law, it may also be used for imposing administrative or criminal sanctions. Only the persons or authorities mentioned in paragraph 2 may use the information and then only for purposes set out in the preceding sentences of this paragraph. They may disclose it in public court proceedings or in judicial decisions.

4. Notwithstanding paragraphs 1 and 2, the state providing the information shall, on the basis of a reasoned request, permit its use for purposes other than those referred to in Article 2(1) by the state which receives the information if, under the legislation of the state providing the information, the information may be used for similar purposes. The requested authority shall accept or refuse any such request within one month.

5. Reports, statements and any other documents, or certified true copies or extracts thereof, obtained by a state under the assistance provided by this Protocol may be invoked as evidence in that state on the same basis as similar documents provided by another authority of that state.

6. Information provided by a state to another state may be transmitted by the latter to another state, subject to prior authorisation by the competent authority from which the information originated. The state of origin of the information may oppose such a sharing of information within ten working days of the date on which it received the communication from the state wishing to share the information.

7. The states may transmit information obtained in accordance with this Protocol to third countries subject to the following conditions:

- (a) the transmission of information is subject to the national legislation of the transmitting state implementing Article 44 of Regulation (EU) 2016/679, especially as regards the adequate level of protection provided in the third country concerned;
- (b) the competent authority from which the information originates has consented to that communication;

(c) the transmission is permitted by assistance arrangements between the state transmitting the information and that particular third country.

8. When a state receives information from a third country, the states may exchange that information, in so far as permitted by the assistance arrangements with that particular third country.

9. Each state shall immediately notify the other states concerned regarding any breach of confidentiality, failure of safeguards of personal data and any sanctions and remedial actions consequently imposed.

10. Persons duly accredited by the Security Accreditation Authority of the European Commission may have access to this information only in so far as it is necessary for care, maintenance and development of the electronic systems hosted by the Commission and used by the states to implement this Protocol.

## *TITLE II: ADMINISTRATIVE COOPERATION AND COMBATING FRAUD*

### Chapter one: Exchange of information request

#### Article 7: Exchange of information and administrative enquiries

1. At the request of the requesting authority, the requested authority shall communicate the information referred to in Article 2(1)(a), including any information relating to a specific case or cases.

2. For the purpose of forwarding the information referred to in paragraph 1, the requested authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information.

3. The request referred to in paragraph 1 may contain a reasoned request for a specific administrative enquiry. The requested authority shall undertake the administrative enquiry in consultation of the requesting authority where necessary. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

4. Where the requested authority refuses an administrative enquiry into the amounts declared or those that should have been declared by a taxable person established in the state of the requested authority, in connection with supplies of goods or services and imports of goods which are made by this taxable person and which are taxable in the state of the requesting authority, the requested authority shall at least provide to the requesting authority the dates and values of any relevant supplies and imports made by the taxable person in the state of the requesting authority over the previous two years .

5. Where the competent authorities of at least two states consider that an administrative enquiry into the amounts referred to in paragraph 4 of this Article, is required and submit a common reasoned request containing indications or evidence of risks of VAT evasion or fraud, the requested authority shall not refuse to undertake that enquiry except on the grounds provided for in point (b) of Article 15(1), Article 15(2), (3) or (4). Where the requested state already possesses the information requested, it shall provide this information to the requesting states. Where the requesting states are not satisfied with the information received, they shall inform the requested state to proceed further with the administrative enquiry.

6. If the requested state so requires, officials authorised by the requesting authorities shall take part in the administrative enquiry. Such administrative enquiry shall be carried out jointly and shall be conducted under the direction and according to the legislation of the requested state. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority and, in so far as it is permitted under the legislation of the requested state for its officials, be able to interview taxable persons. The inspection powers of the officials of the requesting authorities shall be exercised for the sole purpose of carrying out the administrative enquiry.

7. Where the requested state has not required officials from the requesting states, the officials from any of the requesting states shall be able to be present during the administrative enquiry exercising the powers provided for in Article 13(2), in so far as conditions under the national law of the requested state are met. In any case, the officials from those requesting states shall be able to be present for consultation.

Where officials from the requesting states have to participate or have to be present, the administrative enquiry shall be carried out only when such participation or presence for the purposes of the administrative enquiry is ensured.

6. In order to obtain the information sought or to conduct the administrative enquiry requested, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own state.

7. At the request of the requesting authority, the requested authority shall communicate to it any pertinent information it obtains or has in its possession as well as the results of administrative enquiries, in the form of reports, statements and any other documents, or certified true copies or extracts thereof.

8. Original documents shall be provided only where this is not contrary to the provisions in force in the state of the requested authority.

#### Article 8: Time limit for providing information

1. The requested authority shall provide the information referred to in Article 7 as quickly as possible and no later than three months following the date of receipt of the request. However, where the requested authority is already in possession of that information, the time limit shall be reduced to a maximum period of one month.

2. In certain special categories of cases, time limits which are different from those provided for in paragraph 1 may be agreed between the requested and the requesting authorities.

3. Where the requested authority is unable to respond to the request within the time limits referred to in paragraphs 1 and 2, it shall forthwith inform the requesting authority in writing of the reasons for its failure to do so, and when it considers it would be likely to be able to respond.

### Chapter two: Exchange of information without prior request

#### Article 9: Types of exchange of information

Exchange of information without prior request shall either be spontaneous, as provided for in Article 10, or automatic, as provided for in Article 11.

## Article 10: Spontaneous exchange of information

The competent authority of a state shall, without prior request, forward to the competent authority of another state the information referred to in Article 2(1)(a) which has not been forwarded under the automatic exchange referred to in Article 11 and of which it is aware of in the following cases:

- (a) where taxation is deemed to take place in the state of destination and information from the state of origin is necessary for the effectiveness of the control system of the state of destination;
- (b) where a state has grounds to believe that a breach of VAT legislation has been committed or is likely to have been committed in the other state;
- (c) where there is a risk of tax loss in the other state.

## Article 11: Automatic exchange of information

1. The categories of information subject to automatic exchange shall be determined by the Specialised Committee in accordance with Article 39.
2. A state may abstain from taking part in the automatic exchange of one or more categories of information referred to in paragraph 1 where the collection of information for such exchange would require the imposition of new obligations on persons liable for VAT or would impose a disproportionate administrative burden on that state.
3. Each state shall notify the Specialised Committee in writing of its decision taken in accordance with the previous paragraph.

## Chapter three: Other forms of cooperation

### Article 12: Administrative notification

1. The requested authority shall, at the request of the requesting authority and in accordance with the rules governing the notification of similar instruments in the state of the requested authority, notify the addressee of all instruments and decisions which emanate from the requesting authorities and concern the application of VAT legislation in the state of the requesting authority.
2. Requests for notification, mentioning the subject of the instrument or decision to be notified, shall indicate the name, address and any other relevant information for identifying the addressee.
3. The requested authority shall inform the requesting authority immediately of its response to the request for notification and notify it, in particular, of the date of notification of the decision or instrument to the addressee.

### Article 13: Presence in administrative offices and participation in administrative enquiries

1. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, the requested authority may allow officials authorised by the requesting authority to be present in the offices of the requested authority, or any other place where those authorities carry out their duties, with a view to exchanging the information referred to in Article 2(1)(a). Where the requested information is

contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies thereof.

2. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, the requested authority may allow officials authorised by the requesting authority to be present during the administrative enquiries carried out in the territory of the state of the requested authority, with a view to exchanging the information referred to in Article 2(1)(a). Such administrative enquiries shall be carried out exclusively by the officials of the requested authority. The officials of the requesting authority shall not exercise the powers of inspection conferred on officials of the requested authority. They may, however, have access to the same premises and documents as the latter, through the intermediation of the officials of the requested authority and for the sole purpose of carrying out the administrative enquiry.

3. By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authorities may, with a view to collecting and exchanging the information referred to in Article 2(1)(a), take part in the administrative enquiries carried out in the territory of the requested state. Such administrative enquiries shall be carried out jointly by the officials of the requesting and requested authorities and shall be conducted under the direction and according to the legislation of the requested state. The officials of the requesting authorities shall have access to the same premises and documents as the officials of the requested authority and, in so far as it is permitted under the legislation of the requested state for its officials, be able to interview taxable persons.

Where it is permitted under the legislation of the requested state the officials of the requesting states shall exercise the same inspection powers as those conferred on officials of the requested state.

The inspection powers of the officials of the requesting authorities shall be exercised for the sole purpose of carrying out the administrative enquiry.

By agreement between the requesting authorities and the requested authority, and in accordance with the arrangements laid down by the requested authority, the participating authorities may draft a common enquiry report.

4. The officials of the requesting authority present in another state in accordance with paragraphs 1, 2 and 3 must at all times be able to produce written authority stating their identity and their official capacity.

#### Article 14: Simultaneous controls

1. The states may agree to conduct simultaneous controls whenever they consider such controls to be more effective than controls carried out by only one state.

2. A state shall identify independently the taxable persons which it intends to propose for a simultaneous control. The competent authority of that state shall notify the competent authority of the other state concerned of the cases proposed for a simultaneous control. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the period of time during which such controls should be conducted.

3. A competent authority that receives the proposal for a simultaneous control shall confirm its agreement or communicate its reasoned refusal to the counterpart authority, in principle within two weeks of receipt of the proposal, but within a month of receipt of the proposal at the latest.

4. Each competent authority concerned shall appoint a representative to be responsible for supervising and coordinating the control operation.

#### Chapter four: General provisions

##### Article 15: Conditions governing the exchange of information

1. The requested authority shall provide a requesting authority with the information referred in Article 2(1)(a) or with an administrative notification referred to in Article 12 provided that:

- (a) the number and nature of the requests for information made by the requesting authority do not impose a disproportionate administrative burden on that requested authority;
- (b) the requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.

2. This Protocol shall impose no obligation to have enquiries carried out or to provide information on a particular case if the laws or administrative practices of the state which would have to supply the information do not authorise that state to carry out those enquiries or collect or use that information for own purposes.

3. A requested authority may refuse to provide information where the requesting authority is unable, for legal reasons, to provide similar information. The requested authority shall inform the Specialised Committee of the grounds for the refusal.

4. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

5. Paragraphs 2, 3 and 4 should on no account be interpreted as authorising the requested authority to refuse to supply information on the sole grounds that this information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a legal person.

6. The requested authority shall inform the requesting authority of the grounds for refusing a request for assistance.

##### Article 16: Feedback

Where a competent authority provides information pursuant to Article 7 or 10, it may request the competent authority which receives the information to give feedback thereon. If such request is made, the competent authority which receives the information shall, without prejudice to the rules on tax secrecy and data protection applicable in its state, send feedback as soon as possible, provided that this does not impose a disproportionate administrative burden on it.

##### Article 17: Language

Requests for assistance, including requests for notification and attached documents, shall be made in a language agreed between the requested and requesting authority.

## Article 18: Statistical data

By 30 June each year, the Parties shall communicate by electronic means to the Specialised Committee a list of statistical data on the application of this Title.

## Article 19: Standard forms and means of communication

1. Any information communicated pursuant to Articles 7, 10, 11, 12 and 16 and the statistics pursuant to Article 18 shall be provided using a standard form referred to in Article 39(2)(d), except in the cases referred to in paragraphs 7 and 8 of Article 6 or in specific cases when the respective competent authorities deem other secure means more appropriate and agree to use them.
2. The standard forms shall be transmitted, in so far as possible, by electronic means.
3. Where the request has not been lodged completely through the electronic systems, the requested authority shall confirm receipt of the request by electronic means without delay and, in any event, no later than five working days after receipt.
4. Where an authority has received a request or information of which it is not the intended recipient, it shall send a message by electronic means to the sender without delay and, in any event, no later than five working days after receipt.

## *TITLE III: RECOVERY ASSISTANCE*

### Chapter one: Exchange of information

#### Article 20: Request for information

1. At the request of the applicant authority, the requested authority shall provide any information which is foreseeably relevant to the applicant authority in the recovery of its claims as referred to in Article 2(1)(b).

For the purpose of providing that information, the requested authority shall arrange for the carrying-out of any administrative enquiries necessary to obtain it.

2. The requested authority shall not be obliged to supply information:
  - (a) which it would not be able to obtain for the purpose of recovering similar claims on its own behalf;
  - (b) which would disclose any commercial, industrial or professional secrets;
  - (c) the disclosure of which would be liable to prejudice the security of or be contrary to the public policy of the state of the requested authority.
3. Paragraph 2 shall in no case be construed as permitting a requested authority to decline to supply information solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

4. The requested authority shall inform the applicant authority of the grounds for refusing a request for information.

#### Article 21: Exchange of information without prior request

Where a refund of taxes or duties relates to a person established or resident in another state, the state from which the refund is to be made may inform the state of establishment or residence of the pending refund.

#### Article 22: Presence in administrative offices and participation in administrative enquiries

1. By agreement between the applicant authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the applicant authority may, with a view to promoting mutual assistance provided for in this Title:

- (a) be present in the offices where officials of the requested state carry out their duties;
- (b) be present during administrative enquiries carried out in the territory of the requested state;
- (c) assist the competent officials of the requested state during court proceedings in that state.

2. In so far as it is permitted under applicable legislation in the requested state, the agreement referred to in paragraph 1(b) may provide that officials of the applicant authority may interview individuals and examine records.

3. Officials authorised by the applicant authority who make use of the possibility offered by paragraphs 1 and 2 must at all times be able to produce written authority stating their identity and their official capacity.

#### Chapter two: Assistance for the notification of documents

#### Article 23: Request of certain documents relating to claims

1. At the request of the applicant authority, the requested authority shall notify to the addressee all documents, including those of a judicial nature, which emanate from the state of the applicant authority and which relate to a claim as referred to in Article 2(1)(b) or to its recovery.

The request for notification shall be accompanied by a standard form containing at least the following information:

- (a) name, address and other data relevant to the identification of the addressee;
- (b) the purpose of the notification and the period within which notification should be effected;
- (c) a description of the attached document and the nature and amount of the claim concerned;
- (d) name, address and other contact details regarding:
  - i. the office responsible with regard to the attached document; and, if different,
  - ii. the office where further information can be obtained concerning the notified document or concerning the possibilities to contest the payment obligation.



2. The applicant authority shall make a request for notification pursuant to this article only when it is unable to notify in accordance with the rules governing the notification of the document concerned in its own state or when such notification would give rise to disproportionate difficulties.

3. The requested authority shall forthwith inform the applicant authority of any action taken on its request for notification and in particular of the date of notification of the document to the addressee.

#### Article 24: Means of notification

1. The requested authority shall ensure that notification in the requested state is effected in accordance with the applicable national laws, regulations and administrative practices.

2. Paragraph 1 shall be without prejudice to any other form of notification made by a competent authority of the applicant state in accordance with the rules in force in that state.

A competent authority established in the applicant state may notify any document directly by registered mail or electronically to a person within the territory of another state.

### Chapter three: Recovery or precautionary measures

#### Article 25: Request for recovery

1. At the request of the applicant authority, the requested authority shall recover claims which are the subject of an instrument permitting enforcement in the state of the applicant authority.

2. As soon as any relevant information relating to the matter which gave rise to the request for recovery comes to the knowledge of the applicant authority, it shall forward it to the requested authority.

#### Article 26: Conditions governing a request for recovery

1. The applicant authority may not make a request for recovery if and as long as the claim and/or the instrument permitting its enforcement are contested in the state of the applicant authority, except in cases where the third subparagraph of Article 29(4) applies.

2. Before the applicant authority makes a request for recovery, appropriate recovery procedures available in the state of the applicant authority shall be applied, except in the following situations:

- (a) where it is obvious that there are no assets for recovery in that state or that such procedures will not result in the payment in full of the claim, and the applicant authority has specific information indicating that the person concerned has assets in the state of the requested authority;
- (b) where recourse to such procedures in the state of the applicant authority would give rise to disproportionate difficulty.

Article 27: Instrument permitting enforcement in the state of the requested authority and other accompanying documents

1. Any request for recovery shall be accompanied by a uniform instrument permitting enforcement in the state of the requested authority.

This uniform instrument permitting enforcement shall reflect the substantial contents of the initial instrument permitting enforcement in the state of the applicant authority, and constitute the sole basis for recovery and precautionary measures in the state of the requested authority. No act of recognition, supplementing or replacement shall be required in that state.

The uniform instrument permitting enforcement shall contain at least the following information:

- (a) information relevant to the identification of the initial instrument permitting enforcement, a description of the claim, including its nature, the period covered by the claim, any dates of relevance to the enforcement process, and the amount of the claim and its different components such as principal, interest accrued, etc.;
- (b) name and other data relevant to the identification of the debtor;
- (c) name, address and other contact details regarding:
  - i. the office responsible for the assessment of the claim; and, if different,
  - ii. the office where further information can be obtained concerning the claim or the possibilities for contesting the payment obligation.

2. The request for recovery of a claim may be accompanied by other documents relating to the claim issued by the state of the applicant authority.

Article 28: Execution of the request for recovery

1. For the purpose of the recovery in the state of the requested authority, any claim in respect of which a request for recovery has been made shall be treated as if it was a claim of that state, except where otherwise provided for in this Protocol. The requested authority shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of that state applying to the same claims, except where otherwise provided for in this Protocol.

The application of the recovery measure shall not be refused on the sole ground that the debtor is not a resident of the state of the requested authority.

The state of the requested authority shall not be obliged to grant to claims whose recovery is requested preferences accorded to similar claims arising in the state of the requested authority, except where otherwise agreed or provided under the law of that state. A state which, in the execution of this Protocol, grants preferences to claims arising in another state may not refuse to grant the same preferences to the same or similar claims of other Member States of the Union on the same conditions.

The state of the requested authority shall recover the claim in its own currency.

2. The requested authority shall inform the applicant authority with due diligence of any action it has taken on the request for recovery.

3. From the date on which the recovery request is received, the requested authority shall charge interest for late payment in accordance with the laws, regulations and administrative provisions applicable to its own claims.

4. The requested authority may, where the applicable laws, regulations or administrative provisions so permit, allow the debtor time to pay or authorise payment by instalment and it may charge interest in that respect. It shall inform the applicant authority of any such decision.

5. Without prejudice to Article 35(1), the requested authority shall remit to the applicant authority the amounts recovered with respect to the claim and the interest referred to in paragraphs 3 and 4 of this Article.

#### Article 29: Disputed claims and enforcement measures

1. Disputes concerning the claim, the initial instrument permitting enforcement in the state of the applicant authority or the uniform instrument permitting enforcement in the state of the requested authority and disputes concerning the validity of a notification made by an applicant authority shall fall within the competence of the competent bodies of the state of the applicant authority. If, in the course of the recovery procedure, the claim, the initial instrument permitting enforcement in the state of the applicant authority or the uniform instrument permitting enforcement in the state of the requested authority is contested by an interested party, the requested authority shall inform that party that such an action must be brought by the latter before the competent body of the state of the applicant authority in accordance with the laws in force there.

2. Disputes concerning enforcement measures taken in the state of the requested authority or concerning the validity of a notification made by an authority of the requested state shall be brought before the competent body of that state in accordance with its laws and regulations.

3. Where an action as referred to in paragraph 1 has been brought, the applicant authority shall inform the requested authority thereof and shall indicate the extent to which the claim is not contested.

4. As soon as the requested authority has received the information referred to in paragraph 3, either from the applicant authority or from the interested party, it shall suspend the enforcement procedure, as far as the contested part of the claim is concerned, pending the decision of the body competent in the matter, unless the applicant authority requests otherwise in accordance with the third subparagraph of this paragraph.

At the request of the applicant authority, or where otherwise deemed to be necessary by the requested authority, and without prejudice to Article 31, the requested authority may take precautionary measures to guarantee recovery in so far as the applicable laws or regulations allow.

The applicant authority may, in accordance with the laws, regulations and administrative practices in force in its state, ask the requested authority to recover a contested claim or the contested part of a claim, in so far as the laws, regulations and administrative practices in force in the state of the requested authority allow. Any such request shall be reasoned. If the result of contestation is subsequently favourable to the debtor, the applicant authority shall be liable for reimbursing any sums recovered, together with any compensation due, in accordance with the laws in force in the state of the requested authority.

If a mutual agreement procedure has been initiated between the states of the applicant and requested authorities, and the outcome of the procedure may affect the claim in respect of which

assistance has been requested, the recovery measures shall be suspended or stopped until that procedure has been terminated, unless it concerns a case of immediate urgency because of fraud or insolvency. If the recovery measures are suspended or stopped, the second subparagraph shall apply.

#### Article 30: Amendment or withdrawal of the request for recovery assistance

1. The applicant authority shall inform the requested authority immediately of any subsequent amendment to its request for recovery or of the withdrawal of its request, indicating the reasons for amendment or withdrawal.

2. If the amendment of the request is caused by a decision of the competent body referred to in Article 29(1), the applicant authority shall communicate this decision together with a revised uniform instrument permitting enforcement in the state of the requested authority. The requested authority shall then proceed with further recovery measures on the basis of the revised instrument.

Recovery or precautionary measures already taken on the basis of the original uniform instrument permitting enforcement in the state of the requested authority may be continued on the basis of the revised instrument, unless the amendment of the request is due to invalidity of the initial instrument permitting enforcement in the state of the applicant authority or the original uniform instrument permitting enforcement in the state of the requested authority.

Articles 27 and 29 shall apply in relation to the revised instrument.

#### Article 31: Request for precautionary measures

1. At the request of the applicant authority, the requested authority shall take precautionary measures, if allowed by its national law and in accordance with its administrative practices, to ensure recovery where a claim or the instrument permitting enforcement in the state of the applicant authority is contested at the time when the request is made, or where the claim is not yet the subject of an instrument permitting enforcement in the state of the applicant authority, in so far as precautionary measures are possible in a similar situation under the law and administrative practices of the state of the applicant authority.

The document drawn up for permitting precautionary measures in the state of the applicant authority and relating to the claim for which mutual assistance is requested, if any, shall be attached to the request for precautionary measures in the state of the requested authority. This document shall not be subject to any act of recognition, supplementing or replacement in the state of the requested authority.

2. The request for precautionary measures may be accompanied by other documents relating to the claim.

#### Article 32: Rules governing the request for precautionary measures

In order to give effect to Article 31, Articles 25(2), 28(1) and (2), 29 and 30 shall apply *mutatis mutandis*.

#### Article 33: Limits to the requested authority's obligation

1. The requested authority shall not be obliged to grant the assistance provided for in Articles 25 to 31 if recovery of the claim would, because of the situation of the debtor, create serious economic or social difficulties in the state of the requested authority, in so far as the laws,

regulations and administrative practices in force in that state allow such exception for national claims.

2. The requested authority shall not be obliged to grant the assistance provided for in Articles 20 and 22 to 31 if the initial request for assistance pursuant to Article 20, 22, 23, 25 or 31 is made in respect of claims which are more than 5 years old, dating from the due date of the claim in the state of the applicant authority to the date of the initial request for assistance.

However, in cases where the claim or the initial instrument permitting enforcement in the state of the applicant authority is contested, the 5-year period shall be deemed to begin from the moment when it is established in the state of the applicant authority that the claim or the instrument permitting enforcement may no longer be contested.

Moreover, in cases where a postponement of the payment or instalment plan has been granted by the state of the applicant authority, the 5-year period shall be deemed to begin from the moment when the entire payment period has come to its end.

However, in those cases the requested authority shall not be obliged to grant assistance in respect of claims which are more than 10 years old, dating from the due date of the claim in the state of the applicant authority.

3. The requested authority shall inform the applicant authority of the grounds for refusing a request for assistance.

#### Article 34: Questions on limitation

1. Questions concerning periods of limitation shall be governed solely by the laws in force in the state of the applicant authority.

2. In relation to the suspension, interruption or prolongation of periods of limitation, any steps taken in the recovery of claims by or on behalf of the requested authority in pursuance of a request for assistance which have the effect of suspending, interrupting or prolonging the period of limitation according to the laws in force in the state of the requested authority shall have the same effect in the state of the applicant authority, on condition that the corresponding effect is provided for under the law of the latter state.

If suspension, interruption or prolongation of the period of limitation is not possible under the laws in force in the state of the requested authority, any steps taken in the recovery of claims by or on behalf of the requested authority in pursuance of a request for assistance which, if they had been carried out by or on behalf of the applicant authority in its own state, would have had the effect of suspending, interrupting or prolonging the period of limitation according to the laws of that state shall be deemed to have been taken in the latter state, in so far as that effect is concerned.

The first and second subparagraphs shall not affect the right of the state of the applicant authority to take measures which have the effect of suspending, interrupting or prolonging the period of limitation in accordance with the laws in force in that state.

3. The applicant authority and the requested authority shall inform each other of any action which interrupts, suspends or prolongs the limitation period of the claim for which the recovery or precautionary measures were requested, or which may have this effect.

#### Article 35: Costs

1. In addition to the amounts referred to in Article 28(5), the requested authority shall seek to recover from the person concerned and retain the costs linked to the recovery that it incurred, in accordance with the laws and regulations of its state.
2. The states shall renounce all claims on each other for the reimbursement of costs arising from any mutual assistance they grant each other pursuant to this Protocol.

However, where recovery creates a specific problem, concerns a very large amount in costs or relates to organised crime, the applicant and requested authorities may agree reimbursement arrangements specific to the cases in question.

3. Notwithstanding paragraph 2, the state of the applicant authority shall be liable to the state of the requested authority for any costs and any losses incurred as a result of actions held to be unfounded, as far as either the substance of the claim or the validity of the instrument permitting enforcement and/or precautionary measures issued by the applicant authority are concerned.

#### Chapter four: General rules governing all types of recovery assistance requests

##### Article 36: Use of languages

1. All requests for assistance, standard forms for notification and uniform instruments permitting enforcement in the state of the requested authority shall be sent in, or shall be accompanied by a translation into, the official language, or one of the official languages, of the state of the requested authority. The fact that certain parts thereof are written in a language other than the official language, or one of the official languages, of that state, shall not affect their validity or the validity of the procedure, in so far as that other language is one agreed between the states concerned.
2. The documents for which notification is requested pursuant to Article 23 may be sent to the requested authority in an official language of the state of the applicant authority.
3. Where a request is accompanied by documents other than those referred to in paragraphs 1 and 2, the requested authority may, where necessary, require from the applicant authority a translation of such documents into the official language, or one of the official languages of the state of the requested authority, or into any other language agreed between the states concerned.

##### Article 37: Statistical data

By 30 June each year, the Parties shall communicate by electronic means to the Specialised Committee a list of statistical data on the application of this Title.

##### Article 38: Standard forms and means of communication

1. Requests pursuant to Article 20(1) for information, requests pursuant to Article 23(1) for notification, requests pursuant to Article 25(1) for recovery or requests pursuant to Article 31(1) for precautionary measures and communication of statistical data pursuant to Article 37 shall be sent by electronic means, using a standard form, unless this is impracticable for technical reasons. As far as possible, these forms shall also be used for any further communication with regard to the request.

The uniform instrument permitting enforcement in the state of the requested authority, the document permitting precautionary measures in the state of the applicant authority and the other documents referred to in Articles 27 and 31 shall also be sent by electronic means, unless this is impracticable for technical reasons.

Where appropriate, the standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof, which shall also be sent by electronic means, unless this is impracticable for technical reasons.

Standard forms and communication by electronic means may also be used for the exchange of information pursuant to Article 21.

2. Paragraph 1 shall not apply to the information and documentation obtained through the presence of officials in administrative offices in another state or through participation in administrative enquiries in another state, in accordance with Article 22.

3. If communication is not made by electronic means or with use of standard forms, this shall not affect the validity of the information obtained or of the measures taken in the execution of a request for assistance.

4. The electronic communication network and the standard forms adopted for the implementation of this Protocol may also be used for recovery assistance regarding other claims than the claims referred to in Article 2(1)(b), if such recovery assistance is possible under other bilateral or multilateral legally binding instruments on administrative cooperation between the states.

5. As long and in so far as no detailed rules are adopted by the Specialised Committee for the implementation of this Title, the competent authorities shall make use of the rules, including the standard forms, currently adopted for the implementation of Council Directive 2010/24/EU , whereby the term "Member State" will be interpreted as including the United Kingdom.

Notwithstanding the previous subparagraph, the state of the requested authority shall use the euro currency for the transfer of the recovered amounts to the state of the applicant authority, unless otherwise agreed between the states concerned. States where the official currency is not the euro shall agree with the United Kingdom on the currency for the transfer of the recovered amounts and notify the Specialised Committee thereof.

#### *TITLE IV: IMPLEMENTATION AND APPLICATION*

##### Article 39: Specialised Committee

1. The Specialised Committee shall make recommendations for promoting the aims of this Protocol and adopt decisions:

(a) determining the frequency of, the practical arrangements for and the exact categories of information subject to automatic exchange referred to in Article 11;

- (b) reviewing the result of the automatic exchange of information for each category established pursuant to point (a), so as to ensure that this type of exchange takes place only where it is the most efficient means for the exchange of information;
- (c) establishing new categories of information to be exchanged pursuant to Article 11, should the automatic exchange be the most efficient means of cooperation;
- (d) for the adoption of the standard form for the communication of information pursuant to Articles 19(1) and 38(1);
- (e) establishing what shall be transmitted via the CCN/CSI network or other means;
- (f) on the amount and the modalities of the financial contribution to be made by the United Kingdom to the general budget of the Union in respect of the cost generated by its participation in the European information systems, taking into account the decisions referred to in points (d) and (e);
- (g) adopting implementing rules on the practical arrangements with regard to the organisation of the contacts between the central liaison offices and liaison departments referred to in Article 4(2)(b) and (3)(b);
- (h) establishing the practical arrangements between the central liaison offices for the implementation of Article 4(5);
- (i) adopting implementing rules regarding the conversion of the sums to be recovered and the transfer of sums recovered;
- (j) concluding the service level agreement referred to Article 5;
- (k) to amend the references to legal acts of the Union and the United Kingdom included in this Protocol.

#### *TITLE V: FINAL PROVISIONS*

##### Article 40: Execution of on-going requests

1. Where requests for information and for administrative enquiries sent in accordance with Regulation (EU) No 904/2010 in relation to the transactions covered by Article 99(1) of the Withdrawal Agreement are not yet closed within four years after the end of the transition period laid down in Article 126 of the Withdrawal Agreement, the requested state shall ensure their execution in accordance with the rules of this Protocol.

2. Where assistance requests sent in accordance with Directive 2010/24/EU in relation to the claims referred to in Article 100(1) of the Withdrawal Agreement are not closed within five years after the end of the transition period laid down in Article 126 of the Withdrawal Agreement, the requested state shall ensure their execution in accordance with the rules of this Protocol. The standard uniform form for notification or the instrument permitting enforcement in the requested state established in accordance with the former legislation shall retain its validity for the purposes of such execution. A revised uniform instrument permitting enforcement in the requested state may be established after the end of that five year period, relating to claims for which assistance was requested before that time, referring to the legal basis used for the initial assistance request.



#### Article 41: Relation to other agreements or arrangements

The provisions of this Protocol shall take precedence over the provisions of any bilateral or multilateral legally binding instrument on administrative cooperation, combating fraud in the field of VAT and recovery of claims that has been concluded between Member State(s) of the Union and the United Kingdom, in so far as the provisions of the latter are incompatible with those of this Protocol.

DRAFT

## *Protocol on mutual administrative assistance in customs matters*

### Article 1: Definitions

For the purposes of this Protocol:

- (a) "customs legislation" means any legal or regulatory provision applicable in the territory of either Party, governing the import, export and transit of goods and their placing under any other customs regime or procedure, including measures of prohibition, restriction and control;
- (b) "applicant authority" means a competent administrative authority which has been designated by a Party for this purpose and which makes a request for assistance on the basis of this Protocol;
- (c) "requested authority" means a competent administrative authority which has been designated by a Party for this purpose and which receives a request for assistance on the basis of this Protocol;
- (d) "information" means any data, document, image, report, communication or authenticated copy, in any format, including electronic, whether or not processed or analysed;
- (e) "person" means any natural or legal person;
- (f) "personal data" means any information relating to an identified or identifiable natural person;
- (g) "operation in breach of customs legislation" means any violation or attempted violation of customs legislation.

### Article 2: Scope

1. The Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Protocol, to ensure the correct application of the customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.
2. Assistance in customs matters, as provided for in this Protocol, applies to any administrative authority of either Party which is competent for the application of this Protocol. That assistance shall neither prejudice the provisions governing mutual assistance in criminal matters nor shall it cover information obtained under powers exercised at the request of a judicial authority, except where communication of such information is authorised by that authority.

### Article 3: Assistance on request

1. At the request of the applicant authority, the requested authority shall provide it with all relevant information which may enable it to ensure that customs legislation is correctly applied, including information related to activities noted or planned which are or could be operations in breach of customs legislation.
2. At the request of the applicant authority, the requested authority shall in particular inform it whether:
  - (a) goods exported from the territory of one of the Parties have been properly imported into the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods;

(b) goods imported into the territory of one of the Parties have been properly exported from the territory of the other Party, specifying, where appropriate, the customs procedure applied to the goods.

3. At the request of the applicant authority, the requested authority shall, within the framework of its legal or regulatory provisions, take the necessary steps to ensure special surveillance of and to provide the applicant authority with information on:

- (a) natural or legal persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of customs legislation;
- (b) goods that are or may be transported in such a way that there are reasonable grounds for believing that they have been or are intended to be used in operations in breach of customs legislation;
- (c) places where stocks of goods have been or may be assembled in such a way that there are reasonable grounds for believing that these goods have been or are intended to be used in operations in breach of customs legislation; and
- (d) means of transport that are or may be used in such a way that there are reasonable grounds for believing that they are intended to be used in operations in breach of customs legislation.

#### Article 4: Spontaneous assistance

Wherever possible, on their own initiative, the Parties shall assist each other without delay, and in accordance with their legal or regulatory provisions, by providing information on concluded, planned or ongoing activities which constitute or appear to constitute operations in breach of customs legislation and which may be of interest to the other Party. The information shall focus in particular on:

- (a) persons, goods and means of transportation; and
- (b) new means or methods employed in carrying out operations in breach of customs legislation.

#### Article 5: Form and substance of requests for assistance

Requests pursuant to this Protocol shall be made in writing either in print or electronic format. They shall be accompanied by the documents necessary to enable compliance with the request. In case of urgency, the requested authority may accept oral requests, but such oral requests shall be confirmed by the applicant authority in writing immediately.

2. Requests pursuant to paragraph 1 shall include the following information:

- (a) the applicant authority and requesting official;
- (b) the information and/or type of assistance requested;
- (c) the object of and the reason for the request;
- (d) the legal or regulatory provisions and other legal elements involved;
- (e) indications as exact and comprehensive as possible on the natural or legal persons who are the target of the investigations;

- (f) a summary of the relevant facts and of the enquiries already carried out; and
- (g) any additional available details to enable the requested authority to comply with the request.

3. Requests shall be submitted in an official language of the requested authority or in a language acceptable to that authority, English always being an acceptable language. This requirement does not apply to any documents that accompany the request under paragraph 1.

4. If a request does not meet the formal requirements set out in paragraphs 1 to 3, the requested authority may require the correction or the completion of the request; in the meantime, precautionary measures may be ordered.

#### Article 6: Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed, within the limits of its competence, as though it was acting on its own account or at the request of other authority of that same Party, by supplying information already in its possession, by carrying out appropriate enquiries or by arranging for them to be carried out. This provision shall also apply to any other authority to which the request has been addressed by the requested authority when the latter cannot act on its own.

2. Requests for assistance shall be executed in accordance with the legal or regulatory provisions of the requested Party.

3. Replies to the requests for assistance as referred to in Article 3 shall be transmitted within 3 months from the date the request was received. When the requested authority is not in a position to provide a reply within this deadline, it shall inform the requesting authority promptly with the reasons for the delay which, in any event, shall not be longer than another 3 months.

#### Article 7: Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries to the applicant authority in writing together with relevant documents, certified true copies or other items. This information may be provided in electronic format.

2. Original documents shall be transmitted according to each Party's legal constraints, only upon request of the applicant authority, in cases where certified true copies would be insufficient. The applicant authority shall return these originals at the earliest opportunity.

3. The requested authority shall, under the provisions referred to in Paragraph 2, deliver to the applicant authority, any information related to the authenticity of the documents issued or certified by official agencies within its territory in support of a goods declaration.

#### Article 8: Presence of officials of one Party in the territory of another

1. Duly authorised officials of a Party may, with the agreement of the other Party and subject to the conditions laid down by the latter, be present in the offices of the requested authority or any other concerned authority referred to in paragraph 1 of Article 6, to obtain information relating to activities that are or could be operations in breach of customs legislation, which the applicant authority needs for the purposes of this Protocol.

2. Duly authorised officials of a Party may, with the agreement of the other Party concerned and subject to the conditions laid down by the latter, be present at enquiries carried out in the latter's territory.

3. The presence of officials of a Party in the territory of the other Party shall solely be in an advisory capacity, during which time those authorised officials:

- (a) must at all times be able to furnish proof of their official capacity;
- (b) shall not wear uniform, nor carry weapons; and
- (c) shall enjoy the same protection as that afforded to officials of the other Party, in accordance with the legal and administrative provisions in force there.

#### Article 9: Delivery and Notification

1. At the request of the applicant authority, the requested authority shall, in accordance with legal or regulatory provisions applicable to that authority, take all necessary measures in order to deliver any documents or to notify any decisions of the applicant authority and falling within the scope of this Protocol, to an addressee residing or established in the territory of the requested authority.

2. Such requests for delivery of documents or notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority.

#### Article 10: Automatic exchange of information

1. The Parties may, by mutual arrangement in accordance with Article 16 of this Protocol:

- (a) exchange any information covered by this Protocol on an automatic basis;
- (b) exchange specific information in advance of the arrival of consignments in the territory of the other Party.

2. The Parties will establish arrangements on the type of information they wish to exchange, the format and the frequency of transmission, to implement the exchanges under letters (a) and (b) of paragraph 1.

#### Article 11: Recovery

The Parties shall cooperate in the recovery of claims related to customs duties in accordance with the Protocol on administrative cooperation and combating fraud in the field of Value Added Tax and on mutual assistance for the recovery of claims relating to taxes and duties.

#### Article 12: Exceptions to the obligation to provide assistance

1. Assistance may be refused or may be subject to the satisfaction of certain conditions or requirements in cases where a Party is of the opinion that assistance under this Protocol would:

- (a) be likely to prejudice the sovereignty of the United Kingdom or that of a Member State of the European Union which has been requested to provide assistance under this Protocol;
- (b) be likely to prejudice public policy, security or other essential interests, in particular in the cases referred to in paragraph 5 of Article 13 of this Protocol; or

(c) violate an industrial, commercial or professional secret.

2. The requested authority may postpone the assistance on the grounds that such assistance will interfere with ongoing investigations, prosecutions or proceedings. In such a case, the requested authority shall consult with the applicant authority to determine if assistance can be given subject to such terms or conditions as the requested authority may require.

3. Where the applicant authority seeks assistance which it would itself be unable to provide if so requested, it shall draw attention to that fact in its request. It shall then be for the requested authority to decide how to respond to such a request.

4. In the cases referred to in paragraphs 1 and 2, the requested authority shall communicate its decision and the reasons therefor to the applicant authority without delay.

#### Article 13: Information exchange and confidentiality

1. The information received under this Protocol shall be used solely for the purposes established herein.

2. The use of information obtained under this Protocol in administrative or judicial proceedings instituted in respect of operations in breach of customs legislation, is considered to be for the purposes of this Protocol. Therefore, the Parties may, in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts, use as evidence information obtained and documents consulted in accordance with the provisions of this Protocol. The requested authority may subject the supply of information or the granting of access to documents to the condition that it is notified of such use.

3. Where one of the Parties wishes to use such information for other purposes, it shall obtain the prior written consent of the authority which provided the information. Such use shall then be subject to any restrictions laid down by that authority.

4. Any information communicated in whatsoever form pursuant to this Protocol shall be of a confidential or restricted nature, in accordance with the laws and regulations applicable in each Party. That information shall be covered by the obligation of professional secrecy and shall enjoy the protection granted to similar information under the relevant laws and regulations of the receiving Party. The Parties shall communicate to each other information on their applicable laws and regulations.

5. Personal data may be transferred only in accordance with the data protection rules of the Party providing the data. Each Party will inform the other Party about the relevant data protection rules and, if needed, make best efforts to agree on additional protections.

#### Article 14: Experts and witnesses

The requested authority may authorise its officials to appear, within the limitations of the authorisation granted, as experts or witnesses in judicial or administrative proceedings regarding the matters covered by this Protocol, and produce such objects, documents or certified true copies thereof, as may be needed for the proceedings. The request for appearance must indicate specifically before which judicial or administrative authority the official will have to appear, on what matters and by virtue of what title or qualification the official will be questioned.

#### Article 15: Assistance expenses

1. Subject to paragraphs 2 and 3., the Parties shall waive any claims on each other for reimbursements of expenses incurred in the execution of this Protocol.
2. Expenses and allowances paid to experts, witnesses, interpreters and translators, other than public service employees, shall be borne as appropriate by the requesting Party.
3. If expenses of an extraordinary nature are required to execute the request, the Parties shall determine the terms and conditions under which the request shall be executed, as well as the manner in which such costs shall be borne.

#### Article 16: Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the customs authorities of the United Kingdom and on the other hand to the competent services of the European Commission and the customs authorities of the Member States of the European Union, as appropriate. They shall decide on all practical measures and arrangements necessary for the implementation of this Protocol, taking into consideration their respective applicable laws and regulations in particular for the protection of personal data.
2. The Parties shall keep each other informed of the detailed implementation measures which are adopted by each Party in accordance with the provisions of this Protocol, in particular with respect to the duly authorised services and officials designated as competent to send and receive the communications laid out in this Protocol.
3. In the Union, the provisions of this Protocol shall not affect the communication of any information obtained under this Protocol between the competent services of the European Commission and the customs authorities of the Member States.

#### Article 17: Other agreements

The provisions of this Protocol shall take precedence over the provisions of any bilateral Agreement on mutual administrative assistance in customs matters which has been or may be concluded between individual Member States and the United Kingdom insofar as the provisions of the latter are incompatible with those of this Protocol.

#### Article 18: Consultations

In respect to the interpretation and implementation of this Protocol, the Parties shall consult each other to resolve the matter in the framework of the Specialised Committee on customs cooperation.

## *Protocol on Social Security Coordination*

### *General Provisions*

#### Article MOBI.SSC.1

#### **Definitions**

For the purposes of this Protocol, the definitions of Article 1 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and of Article 1 of Regulation (EC) No 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems will apply.

#### Article MOBI.SSC.2

#### **Persons covered**

This Protocol applies to the following persons, as well as the members of their families and their survivors:

- (a) For the purposes of Articles 3 to 67 of this Protocol, persons benefitting from the mobility provisions under Title XI Mobility of Natural Persons.
- (b) For the purposes of Articles MOBI.SSC 7 and 18 to 26 of this Protocol, Union or United Kingdom citizens who receive a pension or pensions under the legislation of one or more Parties.
- (c) For the purposes of Article MOBI.SSC 15, Union or United Kingdom citizens during a stay in one of the Parties, other than the competent Party.

#### Article MOBI.SSC.3

#### **Matters covered**

This Protocol applies to the following branches of social security:

- (a) sickness benefits;
- (b) maternity and equivalent paternity benefits;
- (c) invalidity benefits;
- (d) old-age benefits;
- (e) survivors' benefits;
- (f) benefits in respect of accidents at work and occupational diseases;
- (g) death grants;



- (h) unemployment benefits;
- (i) pre-retirement benefits;
- (j) family benefits.

Article MOBI.SSC.4

#### **Equality of treatment**

Unless otherwise provided for by this Agreement, the Parties shall ensure that persons covered by this Protocol enjoy the same benefits and are subject to the same obligations under the legislation of any of the Parties as the nationals thereof.

Article MOBI.SSC.5

#### **Equal treatment of benefits, income, facts or events**

Unless otherwise provided for by this Agreement, the Parties shall ensure the application of the principle of equal treatment of benefits, income, facts or events in the following manner:

- (a) where, under the legislation of the competent Party, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of the other Party or to income acquired in the latter Party;
- (b) where, under the legislation of the competent Party, legal effects are attributed to the occurrence of certain facts or events, that Party shall take account of like facts or events that have occurred in the other Party as though they have taken place in its own territory.

Article MOBI.SSC.6

#### **Aggregation of periods**

1. The competent Party shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence in the other Party as though they were periods completed under the legislation which it applies, where its legislation makes conditional upon the completion of periods of insurance, employment, self-employment or residence:

- (a) the acquisition, retention, duration or recovery of the right to benefits,
- (b) the coverage by legislation, or
- (c) the access to or the exemption from compulsory, optional continued or voluntary insurance.

Article MOBI.SSC.7

#### **Waiving of residence rules**

1. The Parties shall ensure the application of the principle of exportability of cash benefits in accordance with paragraph 2.

2. Unless otherwise provided for by this Agreement, cash benefits payable under the legislation of a Party or under this Agreement shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of his/her

family reside in a Party other than that in which the institution responsible for providing benefits is situated.

#### Article MOBI.SSC.8

##### **Preventing of overlapping of benefits**

Unless otherwise provided for by this Agreement, this Agreement shall neither confer nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance.

#### Determination of the legislation applicable

#### Article MOBI.SSC.9

##### **General Rules**

1. Persons to whom this Protocol applies shall be subject to the legislation of a single Party only. Such legislation shall be determined in accordance with this Section.
2. For the purposes of this Protocol, persons receiving cash benefits because or as a consequence of their activity as an employed or self-employed person shall be considered to be pursuing the said activity. This shall not apply to invalidity, old-age or survivors' pensions or to pensions in respect of accidents at work or occupational diseases or to sickness benefits in cash covering treatment for an unlimited period.
3. Subject to Articles MOBI.SSC. 10, 11 and 12:
  - (a) a person pursuing an activity as an employed or self-employed person in a Party shall be subject to the legislation of that Party;
  - (b) a civil servant shall be subject to the legislation of the Party to which the administration employing him is subject;
  - (c) a person called up or recalled for service in the armed forces or for civilian service in a Party shall be subject to the legislation of that Party;
  - (d) any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Party of residence, without prejudice to other provisions of this Agreement guaranteeing him or her benefits under the legislation of one or more other Parties.

#### Article MOBI.SSC.10

##### **Special rules**

1. A person who pursues an activity as an employed person in a Party on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Party to perform work on that employer's behalf shall continue to be subject to the legislation of the first Party, provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person.

2. A person who normally pursues an activity as a self-employed person in a Party who goes to pursue a similar activity in another Party shall continue to be subject to the legislation of the first Party, provided that the anticipated duration of such activity does not exceed twenty-four months.

#### Article MOBI.SSC.11

##### **Pursuit of activities in two or more Parties**

1. A person who normally pursues an activity as an employed person in two or more Parties shall be subject to:

(a) the legislation of the Party of residence if he pursues a substantial part of his activity in that Party or if he is employed by various undertakings or various employers whose registered office or place of business is in different Parties, or

(b) if he/she does not pursue a substantial part of his activity in the Party of residence:

(i) to the legislation of the Party in which the registered office or place of business of the undertaking or employer is situated if he is employed by one undertaking or employer; or

(ii) to the legislation of the Party in which the registered office or place of business of the undertakings or employers is situated if he is employed by two or more undertakings or employers which have their registered office or place of business in only one Party; or

(iii) to the legislation of the Party in which the registered office or place of business of the undertaking or employer is situated other than the Party of residence if he is employed by two or more undertakings or employers, which have their registered office or place of business in two Parties, one of which is the Party of residence; or

(iv) to the legislation of the Party of residence if he/she is employed by two or more undertakings or employers, at least two of which have their registered office or place of business in different Parties other than the Party of residence.

2. A person who normally pursues an activity as a self-employed person in two or more Parties shall be subject to:

(a) the legislation of the Party of residence if he pursues a substantial part of his activity in that Party; or

(b) the legislation of the Party in which the centre of interest of his activities is situated, if he does not reside in one of the Parties in which he pursues a substantial part of his activity.

3. A person who normally pursues an activity as an employed person and an activity as a self-employed person in different Parties shall be subject to the legislation of the Party in which he pursues an activity as an employed person or, if he pursues such an activity in two or more Parties, to the legislation determined in accordance with paragraph 1.

4. A person who is employed as a civil servant by one Party and who pursues an activity as an employed person and/or as a self-employed person in one or more other Parties shall be subject to the legislation of the Party to which the administration employing him is subject.

5. Persons referred to in paragraphs 1 to 4 shall be treated, for the purposes of the legislation determined in accordance with these provisions, as though they were pursuing all their activities as employed or self-employed persons and were receiving all their income in the Party concerned.

#### Article MOBI.SSC.12

##### **Voluntary insurance or optional continued insurance**

1. Articles MOBI SSC.9 to 11 shall not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches referred to in Article 3, only a voluntary scheme of insurance exists in a Party.

2. Where, by virtue of the legislation of a Party, the person concerned is subject to compulsory insurance in that Party, he/she may not be subject to a voluntary insurance scheme or an optional continued insurance scheme in another Party. In all other cases in which, for a given branch, there is a choice between several voluntary insurance schemes or optional continued insurance schemes, the person concerned shall join only the scheme of his/her choice.

3. However, in respect of invalidity, old age and survivors' benefits, the person concerned may join the voluntary or optional continued insurance scheme of a Party, even if he/she is compulsorily subject to the legislation of another Party, provided that he/she has been subject, at some stage in his/her career, to the legislation of the first Party because or as a consequence of an activity as an employed or self-employed person and if such overlapping is explicitly or implicitly allowed under the legislation of the first Party.

4. Where the legislation of a Party makes admission to voluntary insurance or optional continued insurance conditional upon residence in that Party or upon previous activity as an employed or self-employed person, Article MOBI SSC.5(b) shall apply only to persons who have been subject, at some earlier stage, to the legislation of that Party on the basis of an activity as an employed or self-employed person.

##### Sickness, maternity and equivalent paternity benefits

#### Article MOBI.SSC.13

##### **Insured persons and members of their families**

##### **Residence in a Party other than the competent Party**

An insured person or members of his/her family who reside in a Party other than the competent Party shall receive in the Party of residence benefits in kind provided, on behalf of the competent institution, by the institution of the place of residence, in accordance with the provisions of the legislation it applies, as though they were insured under the said legislation.

#### Article MOBI.SSC.14

##### **Stay in the competent Party when residence is in another Party – Special rules for the members of the families of frontier workers**

1. Unless otherwise provided for by paragraph 2, the insured person and the members of his family referred to in Article MOBI.SSC.13 shall also be entitled to benefits in kind while staying in the competent Party. The benefits in kind shall be provided by the competent institution and at its own

expense, in accordance with the provisions of the legislation it applies, as though the persons concerned resided in that Party.

2. The members of the family of a frontier worker shall be entitled to benefits in kind during their stay in the competent Party.

Where the competent Party is listed in Annex III of Regulation (EC) No 883/2004 however, the members of the family of a frontier worker who reside in the same Party as the frontier worker shall be entitled to benefits in kind in the competent Party only under the conditions laid down in Article MOBI.SSC.15(1).

#### Article MOBI.SSC.15

##### **Stay outside the competent Party**

An insured person and the members of his/her family staying in a Party other than the competent Party shall be entitled to the benefits in kind which become necessary on medical grounds during their stay, taking into account the nature of the benefits and the expected length of the stay. These benefits shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though the persons concerned were insured under the said legislation.

#### Article MOBI.SSC.16

##### **Cash benefits**

1. An insured person and members of his or her family residing or staying in a Party other than the competent Party shall be entitled to cash benefits provided by the competent institution in accordance with the legislation it applies. By agreement between the competent institution and the institution of the place of residence or stay, such benefits may, however, be provided by the institution of the place of residence or stay at the expense of the competent institution in accordance with the legislation of the competent Party.

2. The competent institution of a Party whose legislation stipulates that the calculation of cash benefits shall be based on average income or on an average contribution basis shall determine such average income or average contribution basis exclusively by reference to the incomes confirmed as having been paid, or contribution bases applied, during the periods completed under the said legislation.

3. The competent institution of a Party whose legislation provides that the calculation of cash benefits shall be based on standard income shall take into account exclusively the standard income or, where appropriate, the average of standard incomes for the periods completed under the said legislation.

4. Paragraphs 2 and 3 shall apply *mutatis mutandis* to cases where the legislation applied by the competent institution lays down a specific reference period which corresponds in the case in question either wholly or partly to the periods which the person concerned has completed under the legislation of one or more other Parties.

#### Article MOBI.SSC.17

##### **Pension claimants**

1. An insured person who, on making a claim for a pension, or during the investigation thereof, ceases to be entitled to benefits in kind under the legislation of the Party last competent, shall remain entitled to benefits in kind under the legislation of the Party in which he or she resides, provided that the pension claimant satisfies the insurance conditions of the legislation of the Party referred to in paragraph 2. The right to benefits in kind in the Party of residence shall also apply to the members of the family of the pension claimant.

2. The benefits in kind shall be chargeable to the institution of the Party which, in the event of a pension being awarded, would become competent under Articles 18 to 20.

#### Article MOBI.SSC 18

##### Pensioners and members of their families

##### **Right to benefits in kind under the legislation of the Party of residence**

A person who receives a pension or pensions under the legislation of two or more Parties, of which one is the Party of residence, and who is entitled to benefits in kind under the legislation of that Member State, shall, with the members of his/her family, receive such benefits in kind from and at the expense of the institution of the place of residence, as though he/she were a pensioner whose pension was payable solely under the legislation of that Party.

#### Article MOBI.SSC 19

##### **No right to benefits in kind under the legislation of the Party of residence**

1. A person who receives a pension or pensions under the legislation of one or more Parties and who is not entitled to benefits in kind under the legislation of the Party of residence shall nevertheless receive such benefits for himself/herself and the members of his/her family, in so far as he/she would be entitled thereto under the legislation of the Party or of at least one of the Parties competent in respect of his/her pensions, if he/she resided in that Party. The benefits in kind shall be provided at the expense of the institution referred to in paragraph 2 by the institution of the place of residence, as though the person concerned were entitled to a pension and benefits in kind under the legislation of that Party.

2. In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution as determined in accordance with the following rules:

(a) where the pensioner is entitled to benefits in kind under the legislation of a single Party, the cost shall be borne by the competent institution of that Party;

(b) where the pensioner is entitled to benefits in kind under the legislation of two or more Party, the cost thereof shall be borne by the competent institution of the Party to whose legislation the person has been subject for the longest period of time; should the application of this rule result in several institutions being responsible for the cost of benefits, the cost shall be borne by the institution applying the legislation to which the pensioner was last subject.

#### Article MOBI.SSC 20

##### **Pensions under the legislation of one or more Parties other than the Party of residence, where there is a right to benefits in kind in the latter Party**

Where the person receiving a pension or pensions under the legislation of one or more Parties resides in a Party under whose legislation the right to receive benefits in kind is not subject to conditions of insurance, or of activity as an employed or self-employed person, and no pension is received from that Party, the cost of benefits in kind provided to him/her and to members of his/her family shall be borne by the institution of one of the Parties competent in respect of his/her pensions determined in accordance with Article 19(2), to the extent that the pensioner and the members of his/her family would be entitled to such benefits if they resided in that Party.

#### Article MOBI.SSC 21

##### **Residence of members of the family in a Party other than the one in which the pensioner resides**

Members of the family of a person receiving a pension or pensions under the legislation of one or more Parties who reside in a Party other than the one in which the pensioner resides shall be entitled to receive benefits in kind from the institution of the place of their residence in accordance with the provisions of the legislation it applies, in so far as the pensioner is entitled to benefits in kind under the legislation of a Party. The costs shall be borne by the competent institution responsible for the costs of the benefits in kind provided to the pensioner in his/her Party of residence.

#### Article MOBI.SSC 22

##### **Stay of the pensioner or the members of his/her family in a Party other than the Party in which they reside — stay in the competent Party**

1. Article MOBI.SSC 15 shall apply mutatis mutandis to a person receiving a pension or pensions under the legislation of one or more Parties and entitled to benefits in kind under the legislation of one of the Parties which provide his/her pension(s) or to the members of his/her family who are staying in a Party other than the one in which they reside.
2. Article MOBI.SSC 14(1) shall apply mutatis mutandis to the persons described in paragraph 1 when they stay in the Party in which is situated the competent institution responsible for the cost of the benefits in kind provided to the pensioner in his/her Party of residence and the said Party has opted for this and is listed in Annex IV to Regulation (EC) No 883/2004.
3. Unless otherwise provided for by paragraph 5, the cost of the benefits in kind referred to in paragraphs 1 to 2 shall be borne by the competent institution responsible for the cost of benefits in kind provided to the pensioner in his/her Party of residence.
4. The cost of the benefits in kind referred to in paragraph 3 shall be borne by the institution of the place of residence of the pensioner or of the members of his/her family, if these persons reside in a Party which has opted for reimbursement on the basis of fixed amounts. In these cases, for the purposes of paragraph 3, the institution of the place of residence of the pensioner or of the members of his/her family shall be considered to be the competent institution.

#### Article MOBI.SSC 23

##### **Special rules for retired frontier workers**

1. A frontier worker who has retired because of old-age or invalidity is entitled in the event of sickness to continue to receive benefits in kind in the Party where he/she last pursued his/her activity as an employed or self-employed person, in so far as this is a continuation of treatment which began in that Party. 'Continuation of treatment' means the continued investigation, diagnosis and treatment of an illness for its entire duration.

The first subparagraph shall apply *mutatis mutandis* to the members of the family of the former frontier worker unless the Party where the frontier worker last pursued his/her activity is listed in Annex III to Regulation (EC) No 883/2004.

2. A pensioner who, in the five years preceding the effective date of an old-age or invalidity pension has been pursuing an activity as an employed or self-employed person for at least two years as a frontier worker shall be entitled to benefits in kind in the Party in which he/she pursued such an activity as a frontier worker, if this Party and the Party in which the competent institution responsible for the costs of the benefits in kind provided to the pensioner in his/her Party of residence is situated have opted for this and are both listed in Annex V to Regulation (EC) No 883/2004.

3. Paragraph 2 shall apply *mutatis mutandis* to the members of the family of a former frontier worker or his/her survivors if, during the periods referred to in paragraph 2, they were entitled to benefits in kind under Article MOBI.SSC 14(2), even if the frontier worker died before his/her pension commenced, provided he/she had been pursuing an activity as an employed or self-employed person as a frontier worker for at least two years in the five years preceding his/her death.

4. Paragraphs 2 and 3 shall be applicable until the person concerned becomes subject to the legislation of a Party on the basis of an activity as an employed or self-employed person.

5. The cost of the benefits in kind referred to in paragraphs 1 to 3 shall be borne by the competent institution responsible for the cost of benefits in kind provided to the pensioner or to his/her survivors in their respective Parties of residence.

Article MOBI.SSC 24

#### **Cash benefits for pensioners**

1. Cash benefits shall be paid to a person receiving a pension or pensions under the legislation of one or more Parties by the competent institution of the Party in which is situated the competent institution responsible for the cost of benefits in kind provided to the pensioner in his/her Party of residence. Article MOBI.SSC 16 shall apply *mutatis mutandis*.

2. Paragraph 1 shall also apply to the members of a pensioner's family.

Article MOBI.SSC 25

#### **Contributions by pensioners**

1. The institution of a Party which is responsible under the legislation it applies for making deductions in respect of contributions for sickness, maternity and equivalent paternity benefits, may request and recover such deductions, calculated in accordance with the legislation it applies, only to the extent that the cost of the benefits pursuant to Articles MOBI.SSC 18 to 21 is to be borne by an institution of the said Party.

2. Where, in the cases referred to in Article MOBI.SSC 20, the acquisition of sickness, maternity and equivalent paternity benefits is subject to the payment of contributions or similar payments under



the legislation of a Party in which the pensioner concerned resides, these contributions shall not be payable by virtue of such residence.

#### Article MOBI.SSC 26

##### **General provisions**

Articles MOBI.SSC 18 to 25 shall not apply to a pensioner or the members of his/her family who are entitled to benefits under the legislation of a Party on the basis of an activity as an employed or self-employed person. In such a case, the person concerned shall be subject, for the purposes of this Protocol, to Articles MOBI.SSC 13 to 16.

#### Article MOBI.SSC 27

##### **Prioritising of the right to benefits in kind — special rule for the right of members of the family to benefits in the Party of residence**

1. An independent right to benefits in kind based on the legislation of a Party or on this Protocol shall take priority over a derivative right to benefits for members of a family. A derivative right to benefits in kind shall, however, take priority over independent rights, where the independent right in the Party of residence exists directly and solely on the basis of the residence of the person concerned in that Party.

2. Where the members of the family of an insured person reside in a Party under whose legislation the right to benefits in kind is not subject to conditions of insurance or activity as an employed or self-employed person, benefits in kind shall be provided at the expense of the competent institution in the Party in which they reside, if the spouse or the person caring for the children of the insured person pursues an activity as an employed or self-employed person in the said Party or receives a pension from that Party on the basis of an activity as an employed or self-employed person.

#### Article MOBI.SSC.28

##### **Substantial benefits in kind**

An insured person or a member of his/her family who has had a right to a prosthesis, a major appliance or other substantial benefits in kind recognised by the institution of a Party, before he/she became insured under the legislation applied by the institution of another Party, shall receive such benefits at the expense of the first institution, even if they are awarded after the said person has already become insured under the legislation applied by the second institution.

#### Article MOBI.SSC.29

##### **Overlapping of long-term care benefits**

1. If a recipient of long-term care benefits in cash, which have to be treated as sickness benefits and are therefore provided by the Party competent for cash benefits under Articles MOBI.SSC 16 or 24, is, at the same time and under this Sub-section, entitled to claim benefits in kind intended for the same purpose from the institution of the place of residence or stay in another Party, and an institution in the first Party is also required to reimburse the cost of these benefits in kind under Article MOBI.SSC.30, the general provision on prevention of overlapping of benefits laid down in

Article [...] shall be applicable, with the following restriction only: if the person concerned claims and receives the benefit in kind, the amount of the benefit in cash shall be reduced by the amount of the benefit in kind which is or could be claimed from the institution of the first Party required to reimburse the cost.

2. The Parties, or their competent authorities, may agree on other or supplementary measures which shall not be less advantageous for the persons concerned than the principles laid down in paragraph 1.

#### Article MOBI.SSC.30

##### **Reimbursements between institutions**

1. The benefits in kind provided by the institution of a Party on behalf of the institution of another Party under the sections on sickness benefits shall give rise to full reimbursement.

2. The reimbursements referred to in paragraph 1 shall be determined and effected in accordance with the arrangements set out in Regulation (EC) No 987/2009, either on production of proof of actual expenditure, or on the basis of fixed amounts for Parties the legal or administrative structures of which are such that the use of reimbursement on the basis of actual expenditure is not appropriate.

3. The Parties, and their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions coming under their jurisdiction.

#### Benefits in respect of accidents at work and occupational diseases

#### Article MOBI.SSC.31

##### **Right to benefits in kind and in cash**

1. Without prejudice to any more favourable provisions in paragraph 2 of this Article, Articles MOBI.SSC 13, 14(1) and 15(1) shall also apply to benefits relating to accidents at work or occupational diseases.

2. A person who has sustained an accident at work or has contracted an occupational disease and who resides or stays in a Party other than the competent Party shall be entitled to the special benefits in kind of the scheme covering accidents at work and occupational diseases provided, on behalf of the competent institution, by the institution of the place of residence or stay in accordance with the legislation which it applies, as though he/she were insured under the said legislation.

3. Article MOBI.SSC.16 shall also apply to benefits falling within this Sub-section.

#### Article MOBI.SSC.32

##### **Costs of transport**

1. The competent institution of a Party whose legislation provides for meeting the costs of transporting a person who has sustained an accident at work or is suffering from an occupational

disease, either to his/her place of residence or to a hospital, shall meet such costs to the corresponding place in another Party where the person resides, provided that that institution gives prior authorisation for such transport, duly taking into account the reasons justifying it. Such authorisation shall not be required in the case of a frontier worker.

2. The competent institution of a Party whose legislation provides for meeting the costs of transporting the body of a person killed in an accident at work to the place of burial shall, in accordance with the legislation it applies, meet such costs to the corresponding place in another Party where the person was residing at the time of the accident.

#### Article MOBI.SSC.33

##### **Benefits for an occupational disease where the person suffering from such a disease has been exposed to the same risk in several Parties**

When a person who has contracted an occupational disease has, under the legislation of two or more Parties, pursued an activity which by its nature is likely to cause the said disease, the benefits that he/she or his/her survivors may claim shall be provided exclusively under the legislation of the last of those Parties whose conditions are satisfied.

#### Article MOBI.SSC.34

##### **Aggravation of an occupational disease**

In the event of aggravation of an occupational disease for which a person suffering from such a disease has received or is receiving benefits under the legislation of a Party, the following rules shall apply:

- (a) if the person concerned, while in receipt of benefits, has not pursued, under the legislation of another Party, an activity as an employed or self-employed person likely to cause or aggravate the disease in question, the competent institution of the first Party shall bear the cost of the benefits under the provisions of the legislation which it applies, taking into account the aggravation;
- (b) if the person concerned, while in receipt of benefits, has pursued such an activity under the legislation of another Party, the competent institution of the first Party shall bear the cost of the benefits under the legislation it applies without taking the aggravation into account. The competent institution of the second Party shall grant a supplement to the person concerned, the amount of which shall be equal to the difference between the amount of benefits due after the aggravation and the amount which would have been due prior to the aggravation under the legislation it applies, if the disease in question had occurred under the legislation of that Party.
- (c) the rules concerning reduction, suspension or withdrawal laid down by the legislation of a Party shall not be invoked against persons receiving benefits provided by institutions of two Parties in accordance with subparagraph (b).

#### Article MOBI.SSC.35

##### **Rules for taking into account the special features of a certain legislation**

1. If there is no insurance against accidents at work or occupational diseases in the Party in which the person concerned resides or stays, or if such insurance exists but there is no institution responsible for providing benefits in kind, those benefits shall be provided by the institution of the place of residence or stay responsible for providing benefits in kind in the event of sickness.

2. If there is no insurance against accidents at work or occupational diseases in the competent Party, the provisions of this Sub-section concerning benefits in kind shall nevertheless be applied to a person who is entitled to those benefits in the event of sickness, maternity or equivalent paternity under the legislation of that Party if that person sustains an accident at work or suffers from an occupational disease during a residence or stay in another Party. Costs shall be borne by the institution that is competent for the benefits in kind under the legislation of the competent Party.

3. Article MOBI.SSC.5 shall apply to the competent institution in a Party as regards the equivalence of accidents at work and occupational diseases which either have occurred or have been confirmed subsequently under the legislation of another Party when assessing the degree of incapacity, the right to benefits or the amount thereof, on condition that:

- (a) no compensation is due in respect of an accident at work or an occupational disease which had occurred or had been confirmed previously under the legislation it applies; and
- (b) no compensation is due in respect of an accident at work or an occupational disease which had occurred or had been confirmed subsequently, under the legislation of the other Party under which the accident at work or the occupational disease had occurred or been confirmed.

#### Article MOBI.SSC.36

#### **Reimbursements between institutions**

1. Article MOBI.SSC.30 shall also apply to benefits falling within this Sub-section, and reimbursement shall be made on the basis of actual costs.

2. The Parties, or their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between the institutions under their jurisdiction.

#### Article MOBI.SSC.37

#### Death grants

#### **Right to grants where death occurs in a Party other than the competent one**

1. When an insured person or a member of his/her family dies in a Party other than the competent Party, the death shall be deemed to have occurred in the competent Party.

2. The competent institution shall be obliged to provide death grants payable under the legislation it applies, even if the person entitled resides in a Party other than the competent Party.

3. Paragraphs 1 and 2 shall also apply when the death is the result of an accident at work or an occupational disease.

#### Article MOBI.SSC 38

## Provision of benefits in the event of the death of a pensioner

1. In the event of the death of a pensioner who was entitled to a pension under the legislation of one Party, or to pensions under the legislations of two or more Parties, when that pensioner was residing in a Party other than that of the institution responsible for the cost of benefits in kind provided under Articles MOBI.SSC 19 and 20, the death grants payable under the legislation administered by that institution shall be provided at its own expense as though the pensioner had been residing at the time of his/her death in the Party in which that institution is situated.
2. Paragraph 1 shall apply *mutatis mutandis* to the members of the family of a pensioner.

### Invalidity benefits

#### Article MOBI.SSC 39

#### **Persons subject only to type A legislation**

1. For the purposes of this Sub-section, 'type A legislation' means any legislation under which the amount of invalidity benefits is independent of the duration of the periods of insurance or residence and which is expressly included by the competent Party in Annex VI to Regulation (EC) No 883/2004, and 'type B legislation' means any other legislation.
2. A person who has been successively or alternately subject to the legislation of two or more Parties and who has completed periods of insurance or residence exclusively under type A legislations shall be entitled to benefits only from the institution of the Party whose legislation was applicable at the time when the incapacity for work followed by invalidity occurred, taking into account, where appropriate, Article MOBI.SSC.40, and shall receive such benefits in accordance with that legislation.
3. A person who is not entitled to benefits under paragraph 2 shall receive the benefits to which he/she is still entitled under the legislation of another Party, taking into account, where appropriate, Article MOBI.SSC.40.
4. If the legislation referred to in paragraph 2 or 3 contains rules for the reduction, suspension or withdrawal of invalidity benefits in the case of overlapping with other income or with benefits of a different kind within the meaning of Article MOBI.SSC. 47(2), Articles 47(3) and 49(3) shall apply *mutatis mutandis*.

#### Article MOBI.SSC 40

#### **Special provisions on aggregation of periods**

The competent institution of a Party whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of periods of insurance or residence shall, where necessary, apply Article MOBI.SSC 45 *mutatis mutandis*.

#### Article MOBI.SSC 41

#### **Persons subject either only to type B legislation or to type A and B legislation**

1. A person who has been successively or alternately subject to the legislation of two or more Parties, of which at least one is not a type A legislation, shall be entitled to benefits under the sub-section on old-age pensions, which shall apply *mutatis mutandis* taking into account paragraph 3.

2. However, if the person concerned has been previously subject to a type B legislation and suffers incapacity for work leading to invalidity while subject to a type A legislation, he/she shall receive benefits in accordance with Article MOBI.SSC 39, provided that:

(a) he satisfies the conditions of that legislation exclusively or of others of the same type, taking into account, where appropriate, Article MOBI.SSC 40, but without having recourse to periods of insurance or residence completed under a type B legislation, and

(b) he does not assert any claims to old-age benefits, taking into account Article MOBI.SSC 44(1).

3. A decision taken by an institution of a Party concerning the degree of invalidity of a claimant shall be binding on the institution of any other Party concerned, provided that the concordance between the legislation of these Parties on conditions relating to the degree of invalidity is acknowledged in Annex VII to Regulation (EC) No 883/2004.

#### Article MOBI.SSC 42

#### **Aggravation of invalidity**

1. In the case of aggravation of an invalidity for which a person is receiving benefits under the legislation of one or more Parties, the following provisions shall apply, taking the aggravation into account:

(a) the benefits shall be provided in accordance with the sub-section on old-age pensions, applied *mutatis mutandis*;

(b) however, where the person concerned has been subject to two or more type A legislations and since receiving benefit has not been subject to the legislation of another Party, the benefit shall be provided in accordance with Article MOBI.SSC.39(2).

2. If the total amount of the benefit or benefits payable under paragraph 1 is lower than the amount of the benefit which the person concerned was receiving at the expense of the institution previously competent for payment, that institution shall pay him/her a supplement equal to the difference between the two amounts.

3. If the person concerned is not entitled to benefits at the expense of an institution of another Party, the competent institution of the Party previously competent shall provide the benefits in accordance with the legislation it applies, taking into account the aggravation and, where appropriate, Article MOBI.SSC.40.

#### Article MOBI.SSC.43

#### **Conversion of invalidity benefits into old-age benefits**

1. Invalidity benefits shall be converted into old-age benefits, where appropriate, under the conditions laid down by the legislation or legislations under which they are provided and in accordance with Sub-section on old-age pensions.

2. Where a person receiving invalidity benefits can establish a claim to old-age benefits under the legislation of one or more other Parties, in accordance with Article MOBI.SSC.44, any institution which is responsible for providing invalidity benefits under the legislation of a Party shall continue to provide such a person with the invalidity benefits to which he/she is entitled under the legislation it applies until paragraph 1 becomes applicable in respect of that institution, or otherwise for as long as the person concerned satisfies the conditions for such benefits.

3. Where invalidity benefits provided under the legislation of a Party, in accordance with Article MOBI.SSC.39, are converted into old-age benefits and where the person concerned does not yet satisfy the conditions laid down by the legislation of one or more of the other Parties for receiving those benefits, the person concerned shall receive, from that or those Parties, invalidity benefits from the date of the conversion.

Those invalidity benefits shall be provided in accordance with the sub-section on old-age pensions as if that Sub-section had been applicable at the time when the incapacity for work leading to invalidity occurred, until the person concerned satisfies the qualifying conditions for old-age benefit laid down by the national legislations concerned or, where such conversion is not provided for, for as long as he/she is entitled to invalidity benefits under the latter legislation or legislations.

4. The invalidity benefits provided under Article MOBI.SSC.39 shall be recalculated in accordance with Sub-section on old-age pensions as soon as the beneficiary satisfies the qualifying conditions for invalidity benefits laid down by a type B legislation, or as soon as he/she receives old-age benefits under the legislation of another Party.

#### Old-age and survivors' pensions

##### Article MOBI.SSC.44

#### **General provisions**

1. All the competent institutions shall determine entitlement to benefit, under all the legislations of the Parties to which the person concerned has been subject, when a request for award has been submitted, unless the person concerned expressly requests deferment of the award of old-age benefits under the legislation of one or more Parties.

2. If at a given moment the person concerned does not satisfy, or no longer satisfies, the conditions laid down by all the legislations of the Parties to which he/she has been subject, the institutions applying legislation the conditions of which have been satisfied shall not take into account, when performing the calculation in accordance with Article MOBI.SSC.46(1) (a) or (b), the periods completed under the legislations the conditions of which have not been satisfied, or are no longer satisfied, where this gives rise to a lower amount of benefit.

3. Paragraph 2 shall apply *mutatis mutandis* when the person concerned has expressly requested deferment of the award of old-age benefits.

4. A new calculation shall be performed automatically as and when the conditions to be fulfilled under the other legislations are satisfied or when a person requests the award of an old-age benefit deferred in accordance with paragraph 1, unless the periods completed under the other legislations have already been taken into account by virtue of paragraph 2 or 3.

##### Article MOBI.SSC.45

#### **Special provisions on aggregation of periods**

1. Where the legislation of a Party makes the granting of certain benefits conditional upon the periods of insurance having been completed only in a specific activity as an employed or self-employed person or in an occupation which is subject to a special scheme for employed or self-employed persons, the competent institution of that Party shall take into account periods completed under the legislation of other Parties only if completed under a corresponding scheme or, failing that, in the same occupation, or where appropriate, in the same activity as an employed or self-employed person.

If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for receipt of the benefits of a special scheme, these periods shall be taken into account for the purposes of providing the benefits of the general scheme or, failing that, of the scheme applicable to manual or clerical workers, as the case may be, provided that the person concerned had been affiliated to one or other of those schemes.

2. The periods of insurance completed under a special scheme of a Party shall be taken into account for the purposes of providing the benefits of the general scheme or, failing that, of the scheme applicable to manual or clerical workers, as the case may be, of another Party, provided that the person concerned had been affiliated to one or other of those schemes, even if those periods have already been taken into account in the latter Party under a special scheme.

3. Where the legislation or specific scheme of a Party makes the acquisition, retention or recovery of the right to benefits conditional upon the person concerned being insured at the time of the materialisation of the risk, this condition shall be regarded as having been satisfied if that person has been previously insured under the legislation or specific scheme of that Party and is, at the time of the materialisation of the risk, insured under the legislation of another Party for the same risk or, failing that, if a benefit is due under the legislation of another Party for the same risk. The latter condition shall, however, be deemed to be fulfilled in the cases referred to in Article MOBI.SSC.51.

#### Article MOBI.SSC.46

#### **Award of benefits**

1. The competent institution shall calculate the amount of the benefit that would be due:
  - (a) under the legislation it applies, only where the conditions for entitlement to benefits have been satisfied exclusively under national law (independent benefit);
  - (b) by calculating a theoretical amount and subsequently an actual amount (pro rata benefit), as follows:
    - (i) the theoretical amount of the benefit is equal to the benefit which the person concerned could claim if all the periods of insurance and/or of residence which have been completed under the legislations of the other Parties had been completed under the legislation it applies on the date of the award of the benefit. If, under this legislation, the amount does not depend on the duration of the periods completed, that amount shall be regarded as being the theoretical amount;
    - (ii) the competent institution shall then establish the actual amount of the pro rata benefit by applying to the theoretical amount the ratio between the duration of the periods completed before materialisation of the risk under the legislation it applies and the total duration of the periods completed before materialisation of the risk under the legislations of all the Parties concerned.
2. Where appropriate, the competent institution shall apply, to the amount calculated in accordance with subparagraphs 1(a) and (b), all the rules relating to reduction, suspension or



withdrawal, under the legislation it applies, within the limits provided for by Articles MOBI.SSC. 47 to 49.

3. The person concerned shall be entitled to receive from the competent institution of each Party the higher of the amounts calculated in accordance with subparagraphs 1(a) and (b).

4. Where the calculation pursuant to paragraph 1(a) in one Party invariably results in the independent benefit being equal to or higher than the pro rata benefit, calculated in accordance with paragraph 1(b), the competent institution shall waive the pro rata calculation, provided that:

- (a) such a situation is set out in Part 1 of Annex VIII to Regulation (EC) No 883/2004.
- (b) no legislation containing rules against overlapping, as referred to in Articles MOBI.SSC 48 and 49, is applicable unless the conditions laid down in Article MOBI.SSC.49(2) are fulfilled; and
- (c) Article MOBI.SSC. 51 is not applicable in relation to periods completed under the legislation of another Party in the specific circumstances of the case.

5. Notwithstanding the provisions of paragraphs 1, 2 and 3, the pro rata calculation shall not apply to schemes providing benefits in respect of which periods of time are of no relevance to the calculation, subject to such schemes being listed in part 2 of Annex VIII to Regulation (EC) No 883/2004. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Party concerned.

#### Article MOBI.SSC.47

### **Rules to prevent overlapping**

1. Any overlapping of invalidity, old age and survivors' benefits calculated or provided on the basis of periods of insurance and/or residence completed by the same person shall be considered to be overlapping of benefits of the same kind.

2. Overlapping of benefits which cannot be considered to be of the same kind within the meaning of paragraph 1 shall be considered to be overlapping of benefits of a different kind.

3. The following provisions shall be applicable for the purposes of rules to prevent overlapping laid down by the legislation of a Party in the case of overlapping of a benefit in respect of invalidity, old age or survivors with a benefit of the same kind or a benefit of a different kind or with other income:

- (a) the competent institution shall take into account the benefits or incomes acquired in another Party only where the legislation it applies provides for benefits or income acquired abroad to be taken into account;
- (b) the competent institution shall take into account the amount of benefits to be paid by another Party before deduction of tax, social security contributions and other individual levies or deductions, unless the legislation it applies provides for the application of rules to prevent overlapping after such deductions, under the conditions and the procedures laid down in the Regulation (EC) No 987/2009;;
- (c) the competent institution shall not take into account the amount of benefits acquired under the legislation of another Party on the basis of voluntary insurance or continued optional insurance;
- (d) if a single Party applies rules to prevent overlapping because the person concerned receives benefits of the same or of a different kind under the legislation of other Parties or income acquired in other Parties, the benefit due may be reduced solely by the amount of such benefits or such income.

### **Overlapping of benefits of the same kind**

1. Where benefits of the same kind due under the legislation of two or more Party overlap, the rules to prevent overlapping laid down by the legislation of a Party shall not be applicable to a pro rata benefit.
2. The rules to prevent overlapping shall apply to an independent benefit only if the benefit concerned is:
  - (a) a benefit the amount of which does not depend on the duration of periods of insurance or residence, or
  - (b) a benefit the amount of which is determined on the basis of a credited period deemed to have been completed between the date on which the risk materialised and a later date, overlapping with:
    - (i) a benefit of the same type, except where an agreement has been concluded between two or more Parties to avoid the same credited period being taken into account more than once,
    - (ii) or
    - (iii) a benefit referred to in subparagraph (a).

The benefits and agreements referred to in subparagraphs (a) and (b) are listed in Annex IX to Regulation (EC) No 883/2004.

### **Overlapping of benefits of a different kind**

1. If the receipt of benefits of a different kind or other income requires the application of the rules to prevent overlapping provided for by the legislation of the Parties concerned regarding:
  - (a) two or more independent benefits, the competent institutions shall divide the amounts of the benefit or benefits or other income, as they have been taken into account, by the number of benefits subject to the said rules;
  - (b) however, the application of this subparagraph cannot deprive the person concerned of his/her status as a pensioner for the purposes of the other Sub-sections of this Section under the conditions and the procedures laid down in Regulation (EC) No 987/2009;
  - (c) one or more pro rata benefits, the competent institutions shall take into account the benefit or benefits or other income and all the elements stipulated for applying the rules to prevent overlapping as a function of the ratio between the periods of insurance and/or residence established for the calculation referred to in Article MOBI.SSC.46(1)(b)(ii);
  - (d) one or more independent benefits and one or more pro-rata benefits, the competent institutions shall apply *mutatis mutandis* subparagraph (a) as regards independent benefits and subparagraph (b) as regards pro rata benefits.
2. The competent institution shall not apply the division stipulated in respect of independent benefits, if the legislation it applies provides for account to be taken of benefits of a different kind and/or other income and all other elements for calculating part of their amount determined as a function of the ratio between periods of insurance and/or residence referred to in Article MOBI.SSC.46(1)(b)(ii).

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* where the legislation of one or more Parties provides that a right to a benefit cannot be acquired in the case where the person concerned is in receipt of a benefit of a different kind, payable under the legislation of another Party, or of other income.

#### Article MOBI.SSC.50

##### **Additional provisions for the calculation of benefits**

1. For the calculation of the theoretical and pro rata amounts referred to in Article MOBI.SSC.46(1)(b), the following rules shall apply:

- (a) where the total length of the periods of insurance and/or residence completed before the risk materialised under the legislations of all the Parties concerned is longer than the maximum period required by the legislation of one of these Parties for receipt of full benefit, the competent institution of that Party shall take into account this maximum period instead of the total length of the periods completed; this method of calculation shall not result in the imposition on that institution of the cost of a benefit greater than the full benefit provided for by the legislation it applies. This provision shall not apply to benefits the amount of which does not depend on the length of insurance;
- (b) the procedure for taking into account overlapping periods is laid down in Regulation (EC) No 987/2009;
- (c) if the legislation of a Party provides that the benefits are to be calculated on the basis of incomes, contributions, bases of contributions, increases, earnings, other amounts or a combination of more than one of them (average, proportional, fixed or credited), the competent institution shall:
  - (i) determine the basis for calculation of the benefits in accordance only with periods of insurance completed under the legislation it applies;
  - (ii) use, in order to determine the amount to be calculated in accordance with the periods of insurance and/or residence completed under the legislation of the other Party, the same elements determined or recorded for the periods of insurance completed under the legislation it applies;

where necessary in accordance with the procedures laid down in Annex XI to Regulation (EC) No 883/2004 for the Party concerned;

- (d) In the event that point(c) is not applicable because the legislation of a Party provides for the benefit to be calculated on the basis of elements other than periods of insurance or residence which are not linked to time, the competent institution shall take into account, in respect of each period of insurance or residence completed under the legislation of any other Party, the amount of the capital accrued, the capital which is considered as having been accrued or any other element for the calculation under the legislation it administers divided by the corresponding units of periods in the pension scheme concerned.

2. The provisions of the legislation of a Party concerning the revalorisation of the elements taken into account for the calculation of benefits shall apply, as appropriate, to the elements to be taken into account by the competent institution of that Party, in accordance with paragraph 1, in respect of the periods of insurance or residence completed under the legislation of other Party.

#### Article MOBI.SSC.51

##### **Periods of insurance or residence of less than one year**

1. Notwithstanding Article MOBI.SSC.46(1)(b), the institution of a Party shall not be required to provide benefits in respect of periods completed under the legislation it applies which are taken into account when the risk materialises, if:

(a) the duration of the said periods is less than one year, and

(b) taking only these periods into account no right to benefit is acquired under that legislation.

For the purposes of this Article, 'periods' shall mean all periods of insurance, employment, self-employment or residence which either qualify for, or directly increase, the benefit concerned.

2. The competent institution of each of the Parties concerned shall take into account the periods referred to in paragraph 1, for the purposes of Article MOBI.SSC.46(1)(b)(i).

3. If the effect of applying paragraph 1 would be to relieve all the institutions of the Party concerned of their obligations, benefits shall be provided exclusively under the legislation of the last of those Parties whose conditions are satisfied, as if all the periods of insurance and residence completed and taken into account in accordance with Articles 6 and 45(1) and (2) had been completed under the legislation of that Party.

4. This Article MOBI.SSC. shall not apply to schemes listed in Part [2] of Annex VIII to Regulation (EC) No 883/2004.

#### Article MOBI.SSC.52

### **Award of a supplement**

1. A recipient of benefits to whom this Sub-section applies may not, in the Party of residence and under whose legislation a benefit is payable to him/her, be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with this Sub-section.

2. The competent institution of that Party shall pay him/her throughout the period of his/her residence in its territory a supplement equal to the difference between the total of the benefits due under this Sub-section and the amount of the minimum benefit.

#### Article MOBI.SSC.53

### **Recalculation and revaluation of benefits**

1. If the method for determining benefits or the rules for calculating benefits are altered under the legislation of a Party, or if the personal situation of the person concerned undergoes a relevant change which, under that legislation, would lead to an adjustment of the amount of the benefit, a recalculation shall be carried out in accordance with Article MOBI.SSC.46.

2. On the other hand, if, by reason of an increase in the cost of living or changes in the level of income or other grounds for adjustment, the benefits of the Party concerned are altered by a percentage or fixed amount, such percentage or fixed amount shall be applied directly to the benefits determined in accordance with Article MOBI.SSC.52, without the need for a recalculation.

#### Article MOBI.SSC.54

### **Unemployment Benefits**

### **Special rules on aggregation of periods of insurance, employment or self-employment**

1. The competent institution of a Party whose legislation makes the acquisition, retention, recovery or duration of the right to benefits conditional upon the completion of either periods of insurance, employment or self-employment shall, to the extent necessary, take into account periods of insurance, employment or self-employment completed under the legislation of any other Party as though they were completed under the legislation it applies.

However, when the applicable legislation makes the right to benefits conditional on the completion of periods of insurance, the periods of employment or self-employment completed under the legislation of another Party shall not be taken into account unless such periods would have been considered to be periods of insurance had they been completed in accordance with the applicable legislation.

2. The application of paragraph 1 of this Article shall be conditional on the person concerned having the most recently completed, in accordance with the legislation under which the benefits are claimed:

- (a) periods of insurance, if that legislation requires periods of insurance,
- (b) periods of employment, if that legislation requires periods of employment, or
- (c) periods of self-employment, if that legislation requires periods of self-employment.

Article MOBI.SSC.55

### **Calculation of benefits**

1. The competent institution of a Party whose legislation provides for the calculation of benefits on the basis of the amount of the previous salary or professional income shall take into account exclusively the salary or professional income received by the person concerned in respect of his/her last activity as an employed or self-employed person under the said legislation.

2. Paragraph 1 shall also apply where the legislation administered by the competent institution provides for a specific reference period for the determination of the salary which serves as a basis for the calculation of benefits and where, for all or part of that period, the person concerned was subject to the legislation of another Party.

Article MOBI.SSC.56

### **Family Benefits**

Persons to whom this Agreement applies shall be entitled to family benefits in accordance with the legislation of the competent Party, including for their family members residing in another Party, as if they were residing in the competent Party.

Article MOBI.SSC.57

### **Priority rules in the event of overlapping**

1. Where, during the same period and for the same family members, benefits are provided for under the legislation of more than one Party the following priority rules shall apply:

- (a) in the case of benefits payable by more than one Party on different bases, the order of priority shall be as follows: firstly, rights available on the basis of an activity as an employed or self-employed person, secondly, rights available on the basis of receipt of a pension and finally, rights obtained on the basis of residence;
  - (i) in the case of benefits payable by more than one Party on the same basis, the order of priority shall be established by referring to the following subsidiary criteria:
  - (ii) in the case of rights available on the basis of an activity as an employed or self-employed person: the place of residence of the children, provided that there is such activity, and additionally, where appropriate, the highest amount of the benefits provided for by the conflicting legislations. In the latter case, the cost of benefits shall be shared in accordance with criteria laid down in Regulation (EC) No 987/2009;
  - (iii) in the case of rights available on the basis of receipt of pensions: the place of residence of the children, provided that a pension is payable under its legislation, and additionally, where appropriate, the longest period of insurance or residence under the conflicting legislations;
  - (iv) in the case of rights available on the basis of residence: the place of residence of the children.

2. In the case of overlapping entitlements, family benefits shall be provided in accordance with the legislation designated as having priority in accordance with paragraph 1. Entitlements to family benefits by virtue of other conflicting legislation or legislations shall be suspended up to the amount provided for by the first legislation and a differential supplement shall be provided, if necessary, for the sum which exceeds this amount. However, such a differential supplement does not need to be provided for children residing in another Party when entitlement to the benefit in question is based on residence only.

3. If, under Article MOBI.SSC.56, an application for family benefits is submitted to the competent institution of a Party whose legislation is applicable, but not by priority right in accordance with paragraphs 1 and 2 of this Article:

- (a) that institution shall forward the application without delay to the competent institution of the Party whose legislation is applicable by priority, inform the person concerned and, without prejudice to the provisions of Regulation (EC) No 987/2009 concerning the provisional award of benefits, provide, if necessary, the differential supplement mentioned in paragraph 2;
- (b) the competent institution of the Party whose legislation is applicable by priority shall deal with this application, as though it were submitted directly to itself, and the date on which such an application was submitted to the first institution shall be considered as the date of its claim to the institution with priority.

#### *MISCELLANEOUS*

#### Article MOBI.SSC 58

#### **Cooperation**

1. The competent authorities of the Parties shall communicate to each other all information regarding:

- (a) measures taken to implement this Agreement;
- (b) changes in their legislation which may affect the implementation of this Agreement.

2. For the purposes of this Agreement, the authorities and institutions of the Parties shall lend one another their good offices and act as though implementing their own legislation. The administrative assistance given by the said authorities and institutions shall, as a rule, be free of charge. However, the Partnership Council shall establish the nature of reimbursable expenses and the limits above which their reimbursement is due.

3. The authorities and institutions of the Parties may, for the purposes of this Agreement, communicate directly with one another and with the persons involved or their representatives.

4. The institutions and persons covered by this Agreement shall have a duty of mutual information and cooperation to ensure the correct implementation of this Agreement.

The institutions, in accordance with the principle of good administration, shall respond to all queries within a reasonable period of time and shall in this connection provide the persons concerned with any information required for exercising the rights conferred on them by this Agreement.

The persons concerned must inform the institutions of the competent Party and of the Party of residence as soon as possible of any change in their personal or family situation which affects their right to benefits under this Agreement.

5. Failure to respect the obligation of information referred to in the third subparagraph of paragraph 4 may result in the application of proportionate measures in accordance with national law. Nevertheless, these measures shall be equivalent to those applicable to similar situations under domestic law and shall not make it impossible or excessively difficult in practice for claimants to exercise the rights conferred on them by this Agreement.

6. In the event of difficulties in the interpretation or application of this Agreement which could jeopardise the rights of a person covered by it, the institution of the competent Party or of the Party of residence of the person concerned shall contact the institution(s) of the Party(s) concerned. If a solution cannot be found within a reasonable period, the authorities concerned may call on the Partnership Council to intervene.

7. The authorities, institutions and tribunals of one Party may not reject applications or other documents submitted to them on the grounds that they are written in an official language of another Party, recognised as an official language of the Union institutions.

#### Article MOBI.SSC 59

### **Protection of personal data**

Where, according to this Agreement, the authorities or institutions of a Party communicate personal data to the authorities or institutions of another Party, such communication shall be subject to the data protection legislation of the Party transmitting them. Any communication from the authority or institution of the receiving Party as well as the storage, alteration and destruction of the data provided by that Party shall be subject to the data protection legislation of the receiving Party.

2. Data required for the application of this Agreement shall be transmitted by one Party to another Party in accordance with Union provisions on the protection of natural persons with regard to the processing and free movement of personal data.

#### Article MOBI.SSC 60

## **Data processing**

1. The Parties shall progressively use new technologies for the exchange, access and processing of the data required to apply this Protocol.
2. Each Party shall be responsible for managing its own part of the data-processing services in accordance with the Union provisions on the protection of natural persons with regard to the processing and the free movement of personal data.
3. An electronic document sent or issued by an institution in conformity with this Regulation and the Implementing Regulation may not be rejected by any authority or institution of another Member State on the grounds that it was received by electronic means, once the receiving institution has declared that it can receive electronic documents. Reproduction and recording of such documents shall be presumed to be a correct and accurate reproduction of the original document or representation of the information it relates to, unless there is proof to the contrary.
4. An electronic document shall be considered valid if the computer system on which the document is recorded contains the safeguards necessary in order to prevent any alteration, disclosure or unauthorised access to the recording. It shall at any time be possible to reproduce the recorded information in an immediately readable form. When an electronic document is transferred from one social security institution to another, appropriate security measures shall be taken in accordance with the Union provisions on the protection of natural persons with regard to the processing and the free movement of personal data.

### **Article MOBI.SSC 61**

1. Any exemption from or reduction of taxes, stamp duty, notarial or registration fees provided for under the legislation of one Party in respect of certificates or documents required to be produced in application of the legislation of that Party shall be extended to similar certificates or documents required to be produced in application of the legislation of another Party or of this Agreement.
2. All statements, documents and certificates of any kind whatsoever required to be produced in application of this Agreement shall be exempt from authentication by diplomatic or consular authorities.

### **Article MOBI.SSC 62**

## **Claims, declarations, appeals**

Any claim, declaration or appeal which should have been submitted, in application of the legislation of one Party, within a specified period to an authority, institution or tribunal of that Party shall be admissible if it is submitted within the same period to a corresponding authority, institution or tribunal of another Party. In such a case the authority, institution or tribunal receiving the claim, declaration or appeal shall forward it without delay to the competent authority, institution or tribunal of the former Party either directly or through the competent authorities of the Party concerned. The date on which such claims, declarations or appeals were submitted to the authority, institution or tribunal of the second Party shall be considered as the date of their submission to the competent authority, institution or tribunal.

### **Article MOBI.SSC 63**

## **Medical examinations**



1. Medical examinations provided for by the legislation of one Party may be carried out, at the request of the competent institution, in the territory of another Party, by the institution of the place of stay or residence of the person entitled to benefits, under conditions agreed between the competent authorities of the Parties concerned.

2. Medical examinations carried out under the conditions laid down in paragraph 1 shall be considered as having been carried out in the territory of the competent Party.

#### Article MOBI.SSC 64

### **Collection of contributions and recovery of benefits**

1. Collection of contributions due to an institution of one Party and recovery of benefits provided by the institution of one Party but not due may be effected in another Party in accordance with the procedures and with the guarantees and privileges applicable to the collection of contributions due to the corresponding institution of the latter Party and the recovery of benefits provided by it but not due.

2. Enforceable decisions of the judicial and administrative authorities relating to the collection of contributions, interest and any other charges or to the recovery of benefits provided but not due under the legislation of one Party shall be recognised and enforced at the request of the competent institution in another Party within the limits and in accordance with the procedures laid down by the legislation and any other procedures applicable to similar decisions of the latter Party. Such decisions shall be declared enforceable in that Party insofar as the legislation and any other procedures of that Party so require.

3. Claims of an institution of one Party shall in enforcement, bankruptcy or settlement proceedings in another Party enjoy the same privileges as the legislation of the latter Party accords to claims of the same kind.

4. The procedure for implementing this Article, including costs reimbursement, shall be governed by Regulation (EC) No 987/2009 or, where necessary and as a complementary measure, by means of agreements between Parties.

#### Article MOBI.SSC 65

### **Rights of institutions**

1. If a person receives benefits under the legislation of one Party in respect of an injury resulting from events occurring in another Party, any rights of the institution responsible for providing benefits against a third party liable to provide compensation for the injury shall be governed by the following rules:

(a) where the institution responsible for providing benefits is, under the legislation it applies, subrogated to the rights which the beneficiary has against the third party, such subrogation shall be recognised by each Party;

(b) where the institution responsible for providing benefits has a direct right against the third party, each Party shall recognise such rights.

2. If a person receives benefits under the legislation of one Party in respect of an injury resulting from events occurring in another Party, the provisions of the said legislation which determine the cases in

which the civil liability of employers or of their employees is to be excluded shall apply with regard to the said person or to the competent institution.

Paragraph 1 shall also apply to any rights of the institution responsible for providing benefits against employers or their employees in cases where their liability is not excluded.

3. Where, in accordance with Article 30(3) and/or Article 36(2), two or more Parties or their competent authorities have concluded an agreement to waive reimbursement between institutions under their jurisdiction, or, where reimbursement does not depend on the amount of benefits actually provided, any rights arising against a liable third party shall be governed by the following rules:

(a) where the institution of the Party of residence or stay accords benefits to a person in respect of an injury sustained in its territory, that institution, in accordance with the provisions of the legislation it applies, shall exercise the right to subrogation or direct action against the third party liable to provide compensation for the injury;

(b) for the application of (a):

(i) the person receiving benefits shall be deemed to be insured with the institution of the place of residence or stay,

and

(ii) that institution shall be deemed to be the institution responsible for providing benefits;

(c) paragraphs 1 and 2 shall remain applicable in respect of any benefits not covered by the waiver agreement or a reimbursement which does not depend on the amount of benefits actually provided.

Article MOBI.SSC. 66

#### **Administrative cooperation**

1. As from the date of entry of this agreement, for the matters covered by this Protocol the United Kingdom shall have the status of observer in the Administrative Commission. It may, where the items on the agenda relating to this Section concern the United Kingdom, send a representative, to be present in an advisory capacity, to the meetings of the Administrative Commission and to the meetings of the Technical Commission for Data Processing and Audit Board where such items are discussed.

2. For the purpose of application of this Protocol the United Kingdom shall take part in the Electronic Exchange of Social Security Information (EESSI) and bear the related costs.

Article MOBI.SSC 67

#### **Implementing provisions**

For the purposes of this Protocol, all relevant provisions of Regulation (EC) No 987/2009 should apply respectively.

[Placeholder]

DRAFT

*Protocol on security procedures for exchanging and protecting classified information*

The European Union, hereinafter referred to as 'the EU'

and

The United Kingdom of Great Britain and Northern Ireland, hereinafter referred to as 'the United Kingdom';

hereinafter jointly referred to as 'the Parties';

CONSIDERING that:

- the Parties share the objectives of strengthening their own security in all ways;
- the Parties agree that cooperation should be developed between them on questions of common interest relating to security;
- in this context, a permanent need therefore exists to exchange classified information between the Parties;

RECOGNISING that full and effective cooperation and consultation may require access to and exchange of classified information and material of the Parties;

AWARE that such access to and exchange of classified information and material require that appropriate security measures be taken,

HAVE AGREED AS FOLLOWS:

Article 1

1. In order to fulfil the objectives of strengthening the security of each of the Parties in all ways, this Protocol between the EU and the United Kingdom on security procedures for exchanging and protecting classified information (hereinafter referred to as the 'Protocol') shall apply to classified information or material in any form either provided or exchanged between the Parties.

2. Each Party shall protect classified information received from the other Party from loss or unauthorised disclosure in accordance with the terms set out herein and in accordance with the Parties' respective laws, rules and regulations.

Article 2

For the purposes of this Protocol, 'classified information' shall mean any information or material, in any form, which:

- (a) is determined by either of the Parties to require protection, as its loss or unauthorised disclosure could cause varying degrees of damage or harm to the interests of the United Kingdom, or of the EU or one or more of its Member States; and
- (b) bears a security classification marking as set out in Article 7.

### Article 3

1. The EU institutions and entities to which this Protocol applies shall be: the European Council, the Council of the European Union (hereinafter referred to as 'the Council'), the General Secretariat of the Council, the High Representative of the Union for Foreign Affairs and Security Policy, the European External Action Service (hereinafter referred to as 'the EEAS') and the European Commission.
2. Those EU institutions and entities may share classified information received under this Protocol with other EU institutions and entities, subject to the prior written consent of the providing Party and subject to appropriate assurances that the receiving entity will protect the information adequately.

### Article 4

Each of the Parties shall ensure that it has appropriate security systems and measures in place, based on the basic principles and minimum standards of security laid down in their respective laws, rules or regulations, and reflected in the implementing arrangement to be established pursuant to Article 12, in order to ensure that an equivalent level of protection is applied to classified information subject to this Protocol.

### Article 5

Each of the Parties shall:

- (a) protect classified information provided by or exchanged with the other Party under this Protocol to a level at least equivalent to that afforded by the providing Party;
- (b) ensure that classified information provided or exchanged under this Protocol keeps the security classification marking given to it by the providing Party, and that it is not downgraded or declassified without the prior written consent of the providing Party. The receiving Party shall protect the classified information according to the provisions set out in its own security regulations for information holding an equivalent security classification as specified in Article 7;
- (c) not use such classified information for purposes other than those established by the originator or those for which the information is provided or exchanged, except where the providing party has given its prior written consent."
- (d) not disclose such classified information to third parties without the prior written consent of the providing Party;
- (e) not allow access to such classified information by individuals unless they have a need to know and have been granted security clearance as appropriate in accordance with the applicable laws, rules and regulations of the receiving Party;
- (f) ensure that facilities where classified information provided is handled and stored are appropriately security certified; and
- (g) ensure that all individuals with access to classified information are informed of their responsibility to protect it in accordance with the applicable laws, rules and regulations.

## Article 6

1. Classified information shall be disclosed or released in accordance with the principle of originator consent.
2. For release to recipients other than the Parties, a decision on disclosure or release of classified information will be made by the receiving Party on a case-by-case basis subject to the prior written consent of the providing Party and in accordance with the principle of originator consent.
3. No generic release shall be possible unless procedures are agreed upon between the Parties regarding certain categories of information which are relevant to their specific requirements.
4. Nothing in this Protocol shall be regarded as a basis for mandatory release of classified information between the Parties.
5. Classified information subject to this Protocol may be provided to a contractor or prospective contractor only with the prior written consent of the providing Party. Prior to such release, the receiving Party shall ensure that the contractor or prospective contractor and the contractor's facility are able to protect the information and have an appropriate security clearance.

## Article 7

In order to establish an equivalent level of protection for classified information provided by or exchanged between the Parties, the security classifications shall correspond as follows:

EU	United Kingdom
TRES SECRET UE/EU TOP SECRET	[United Kingdom equivalent]
SECRET UE/EU SECRET	[United Kingdom equivalent]
CONFIDENTIEL UE/EU CONFIDENTIAL	[United Kingdom equivalent]
RESTREINT UE/EU RESTRICTED	[United Kingdom equivalent]

## Article 8

1. The Parties shall ensure that all persons who, in the conduct of their official duties require access, or whose duties or functions may afford them access, to information classified CONFIDENTIEL UE/EU CONFIDENTIAL or [United Kingdom equivalent] or above provided or exchanged under this Protocol are security-cleared as appropriate before they are granted access to such information in addition to the need-to-know requirement provided for in Article 5(e).
2. Security clearance procedures shall be designed to determine whether an individual, taking into account his or her loyalty, trustworthiness and reliability, may have access to classified information.

## Article 9

1. For the purposes of this Protocol:
  - (a) all classified information released to the EU under this Protocol shall be sent through:

- i. the Central Registry of the General Secretariat of the Council if addressed to the European Council, the Council of the EU or the General Secretariat of the Council;
  - ii. the Secretariat-General Registry of the European Commission if addressed to the European Commission;
  - iii. the European External Action Service Registry if addressed to the High Representative of the Union for Foreign Affairs and Security Policy or the European External Action Service.
- (b) all classified information released to the United Kingdom under this Protocol shall be sent to the [United Kingdom organisation] via the Mission of the United Kingdom to the EU.

#### Article 10

Electronic transmission of classified information between the EU and the United Kingdom and between the United Kingdom and the EU shall be encrypted in accordance with the releasing Party's requirements as outlined in its laws, rules and regulations. The releasing Party's requirements shall be met when transmitting, storing and processing classified information in internal networks of the Parties.

#### Article 11

The Secretary-General of the Council, the Member of the European Commission responsible for security matters, the High Representative of the Union for Foreign Affairs and Security Policy and the [United Kingdom competent authority] shall oversee the implementation of this Protocol.

#### Article 12

1. In order to implement this Protocol, an implementing arrangement shall be established between the competent security authorities designated below, each acting under the direction and on behalf of its organisational superiors, in order to lay down the minimum standards for the reciprocal protection of classified information under this Protocol:

– on the one hand

- (a) the Directorate of Safety and Security of the General Secretariat of the Council;
- (b) the Security Directorate of the Directorate-General Human Resources and Security of the European Commission (DG.HR.DS); and
- (c) the Directorate Security and Infrastructure of the EEAS;

– and on the other

the [United Kingdom organisation] of the United Kingdom.

2. Before classified information is provided or exchanged between the Parties under this Protocol, the competent security authorities referred to in paragraph 1 shall agree that the receiving Party is able to protect the information in a way consistent with the security arrangement to be established pursuant to that paragraph.

#### Article 13

The Parties shall provide mutual assistance with regard to the security of classified information subject to this Protocol and matters of common security interest. Reciprocal security consultations and assessment visits shall be conducted by the authorities referred to in Article 12 to assess the effectiveness of the security arrangement within their respective responsibility to be established pursuant to that Article.

#### Article 14

1. The competent authority of either of the Parties referred to in Article 12 shall immediately inform the competent authority of the other Party of any proven or suspected cases of unauthorised disclosure or loss of classified information provided by that Party. The competent authority shall conduct an investigation, with assistance from the other Party if required, and shall report the results to the other Party.

2. The authorities referred to in Article 12 shall establish procedures to be followed in such cases.

#### Article 15

Each Party shall bear its own costs incurred in implementing this Protocol.

#### Article 16

This Protocol shall not preclude the Parties from concluding other agreements relating to the provision or exchange of classified information subject to this Protocol provided they are not incompatible with the obligations under this Protocol.

#### Article 18

Each Party shall notify the other Party of any changes in its laws and regulations that could affect the protection of classified information referred to in this Protocol.

#### Article 19

In case of suspension or termination of this Protocol under [relevant provision of the agreement], all classified information provided or exchanged pursuant to this Protocol shall continue to be protected in accordance with the provisions set out herein.