Council of the European Union

Brussels, 12 February 2026
(OR. en)

6059/1/26
REV 1

LIMITE

UK 16

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Annex to the proposal for a Council decision on the signing, on behalf of the Union, of the Agreement In Respect Of Gibraltar Between The European Union And The European Atomic Energy Community, Of The One Part, And The United Kingdom Of Great Britain And Northern Ireland, Of The Other Part

PUBLIC

AGREEMENT

IN RESPECT OF GIBRALTAR

BETWEEN THE EUROPEAN UNION

AND THE EUROPEAN ATOMIC ENERGY COMMUNITY,

OF THE ONE PART,

AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

OF THE OTHER PART

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PUBLIC

PREAMBLE

THE EUROPEAN UNION

AND

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, IN RESPECT OF GIBRALTAR

1. REAFFIRMING their commitment to democratic principles, the rule of law, human rights, countering proliferation of weapons of mass destruction and to the fight against climate change, which constitute essential elements of this and supplementing agreements,

2. RECOGNISING the importance of global cooperation to address issues of shared interest,

3. NOTING that the United Kingdom withdrew from the European Union and that Gibraltar is not included in the territorial scope of the Trade and Cooperation Agreements concluded between the European Union and the European Atomic Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, done at London and Brussels on 30 December 2020,

4. SEEKING to establish a new mutually cooperative relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland, in respect of Gibraltar ("the Parties"), which also promotes shared prosperity and close and constructive relations in respect of Gibraltar and the adjacent area in the Kingdom of Spain, in particular the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar,

PUBLIC

5. CONSIDERING that, in order to ensure the efficient implementation and correct interpretation and application of this Agreement and any supplementing agreements, as well as compliance with the obligations under those agreements, it is essential to establish rules for governance, in particular dispute settlement and enforcement rules,

6. CONSIDERING that all current physical barriers to the circulation of persons between Gibraltar and the Schengen area should be removed, while preserving the integrity of the Schengen area through appropriate controls, measures and safeguards, and taking into account that Gibraltar does not participate in and is not associated to the Schengen *acquis*,

7. CONSIDERING that, to strengthen the security of the Parties, the removal of physical barriers to the circulation of persons and the controls, measures and safeguards established should be complemented by cooperation between the Parties relating to the prevention, investigation, detection or prosecution of criminal offences and to the execution of criminal penalties, including the safeguarding against and prevention of threats to public security,

8. REAFFIRMING, given the geographical proximity between the Parties, the commitment to cooperate to prevent and combat money laundering and terrorist financing as well as tax evasion and tax avoidance, and to ensure the implementation of international standards of good governance in the tax area,

9. RECOGNISING the need for a balanced economic partnership to be underpinned by a level playing field for open and fair competition and sustainable development, through effective frameworks for state aid control and a commitment to uphold the Parties' respective high levels of protection in the areas of labour and social standards, environment, the fight against climate change, and taxation,

PUBLIC

10. CONSIDERING that all physical barriers to the movement of goods by land between Gibraltar and the Union should be removed, while protecting the integrity of the Union's Single Market and the Parties' financial interests, including by:

– ensuring the fight against customs fraud through appropriate customs controls and procedures as well as other measures;

– providing for cooperation mechanisms between the Parties and safeguards, equally preventing and combating tax fraud, evasion and avoidance;

– applying relevant Union rules governing the movement, production and placing on the market of goods, including Prohibitions and Restrictions and market access rules,

11. SEEKING, given the geographical proximity between the Parties, to cooperate in civil nuclear safety and security matters,

12. CONSIDERING the importance of ensuring road transport for passengers and goods between Gibraltar and a limited contiguous frontier zone in the territory of the Union, and road transport of goods between Gibraltar and the United Kingdom through the territory of the European Union, as well as certain access to the ports of the Parties,

13. SEEKING to establish rules applicable to Gibraltar airport and its operation,

PUBLIC

14. SEEKING to establish clear rules and close and effective cooperation between the competent institutions of the Kingdom of Spain and Gibraltar to protect and provide quick and under optimum conditions to ensure the rights of frontier workers moving between the Kingdom of Spain and Gibraltar to work and corresponding coordination of social security rights, as well as ensuring the rights for their family members,

15. RECOGNISING the importance of a financial mechanism to promote cohesion between Gibraltar and the Campo de Gibraltar, while protecting the Parties' financial interests,

16. DESIRING that an agreement be concluded between the United Kingdom, in respect of Gibraltar, and the Union to provide a legal base for such cooperation,

17. ACKNOWLEDGING that the Parties may supplement this Agreement with other agreements forming an integral part of their overall bilateral relations as governed by this Agreement,

HAVE AGREED AS FOLLOWS:

PUBLIC

PART ONE

COMMON AND INSTITUTIONAL PROVISIONS

PUBLIC

TITLE I

GENERAL PROVISIONS

ARTICLE 1

Purpose

The objective of this Agreement is to establish a mutually cooperative relationship between the Parties, which also promotes shared prosperity and close and constructive relations in respect of Gibraltar and the adjacent area in the Kingdom of Spain, in particular the territory of the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar.

ARTICLE 2

Sovereignty

This Agreement, any supplementing agreements as referred to in Article 3, any administrative arrangements or other arrangements related to this Agreement, and any measures or instruments or conduct taken in application or as a result thereof, or pursuant thereto, shall be without prejudice to, and shall not otherwise affect the respective legal positions of the United Kingdom of Great Britain and Northern Ireland or of the Kingdom of Spain with regard to sovereignty and jurisdiction, and shall not constitute the basis for any assertion or denial of sovereignty including in legal proceedings or otherwise.

ARTICLE 3

Definitions

1. For the purposes of this Agreement and any supplementing agreement, and unless otherwise specified, the following definitions apply:

(a) "Party" or "Parties" means the European Union and the United Kingdom, in respect of Gibraltar;

(b) a "Party's law" or "the Parties' laws" means, with reference to the United Kingdom, in respect of Gibraltar, the laws applicable in Gibraltar, unless specifically provided otherwise;

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(c) "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;

(d) "day" means a calendar day;

(e) "Member State" means a Member State of the European Union;

(f) "personal data" means any information relating to a data subject;

(g) "Contiguous frontier zone" means the municipalities that make up the Mancomunidad de Municipios del Campo de Gibraltar, in the Kingdom of Spain.

2. Any reference to the "Union" in this Agreement or any supplementing agreement shall be understood as including the European Atomic Energy Community, unless otherwise specified or where the context otherwise requires.

3. Any reference to the "United Kingdom" in this Agreement or any supplementing agreement shall be understood as referring to the United Kingdom as the State being responsible for the external relations of Gibraltar.

PUBLIC

ARTICLE 4

Supplementing Agreements

1. Where the Union and the United Kingdom conclude other bilateral agreements between them in respect of Gibraltar, such agreements shall constitute supplementing agreements to this Agreement unless otherwise provided for in those agreements. Such supplementing agreements shall be an integral part of the overall bilateral relations between the Union and the United Kingdom, in respect of Gibraltar, as governed by this Agreement and shall form part of the overall framework.

2. Paragraph 1 also applies to:

(a) agreements between the Union and its Member States, of the one part, and the United Kingdom, in respect of Gibraltar, of the other part;

(b) agreements between the European Atomic Energy Community, of the one part, and the United Kingdom, in respect of Gibraltar, of the other part.

ARTICLE 5

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.

PUBLIC

2. They shall take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Agreement and from any supplementing agreement, and shall refrain from any measures which could jeopardise the attainment of the objectives of this Agreement or any supplementing agreement.

PUBLIC

ARTICLE 6

Communications and notifications

1. Formal communications and decisions to be notified, made by or addressed to the Gibraltar competent authorities, shall be transmitted through the Foreign, Commonwealth and Development Office of the Government of the United Kingdom (hereinafter, "the FCDO"), or such other United Kingdom body, both based in the United Kingdom, as the Government of the United Kingdom may decide to appoint.

2. The FCDO shall certify as authentic documents issued by the competent authorities of Gibraltar where decisions are to be directly enforced before a court or other enforcement authority in a Member State without the need of a formal previous notification.

3. The notification by the United Kingdom of competent authorities in Gibraltar pursuant to this Agreement or any supplementing agreement shall also include reference to the FCDO or other United Kingdom body referred to in paragraph 2.

ARTICLE 7

Removal of physical barriers

All physical barriers shall be removed in accordance with the implementation plan contained in the relevant administrative arrangement between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain.

PUBLIC

TITLE II

BASIS FOR COOPERATION

ARTICLE 8

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, and respect for human rights, which underpin their domestic and international policies. In that regard, the Parties reaffirm their respect for the Universal Declaration of Human Rights and the international human rights treaties to which they are parties.

2. The Parties shall promote such shared values and principles in international forums. The Parties shall cooperate in promoting those values and principles, including with or in third countries.

ARTICLE 9

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 human-caused climate change as elaborated in the United Nations Framework Convention on Climate Change ("UNFCCC") process, and in particular in the Paris Agreement adopted by the Conference of the Parties to the United Nations Framework Convention on Climate Change at its 21st session (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 up by the UNFCCC and refrain from acts or omissions that would materially defeat the object and purpose of the Paris Agreement.

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

PUBLIC

ARTICLE 10

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, to both state and non-state actors, represents one of the most serious threats to international stability and security. The Parties therefore agree to cooperate 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 their existing obligations under international disarmament and non-proliferation treaties.

2. The Parties agree furthermore to cooperate on 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 to the extent that those instruments are open to signature, ratification or accession by the Parties; and

(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.

3. The Parties agree to establish a regular dialogue on those matters.

PUBLIC

ARTICLE 11

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 ("SALW"), including their ammunition, their excessive accumulation, their poor management, inadequately secured stockpiles and their uncontrolled spread continue to pose a serious threat to peace and international security.

2. The Parties agree to observe and fully implement their respective obligations in the case of the United Kingdom, as extended to Gibraltar, to deal with the illicit trade in SALW, including their ammunition, under existing international agreements and UN Security Council resolutions, as well as their respective 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 that regard, to cooperate with each other within the framework of the Arms Trade Treaty, including in promoting the universalisation and full implementation of that Treaty by all UN member states.

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5. The Parties therefore undertake to cooperate 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. The Parties shall take steps to sign, ratify, or accede to, as appropriate, and fully implement the international instruments listed in Annex 1, to the extent that those instruments are open to signature, ratification or accession by the Parties.

6. The Parties agree to establish a regular dialogue on those matters.

PUBLIC

ARTICLE 12

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 those matters.

ARTICLE 13

Counter-terrorism

1. The Parties shall cooperate at the bilateral, regional and international levels to prevent and combat acts of terrorism in all its forms and manifestations in accordance with international law, including, where applicable, international counterterrorism-related agreements, international humanitarian law and international human rights law, as well as in accordance with the principles of the Charter of the United Nations. The Parties shall take steps to sign, ratify, or accede to, as appropriate, and fully implement the international instruments listed in Annex 2 to the extent that those instruments are open to signature, ratification or accession by the Parties.

2. The Parties shall enhance cooperation on counter-terrorism, including preventing and countering violent extremism and the financing of terrorism, with the aim of advancing 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 those matters. This dialogue will, inter alia, aim to promote and facilitate:

(a) the sharing of assessments on the terrorist threat;

(b) the 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.

PUBLIC

ARTICLE 14

Personal data protection

1. This Article applies to the protection of natural persons in relation to their personal data when processed wholly or partly by automated means, or other than by automated means when they form part of a filing system or are intended to form part of a filing system (hereinafter "data protection").

2. Annex 3 shall form an integral part of this Article. This Annex shall not include the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council[1] governing the competence and role of the lead supervisory authority and the supervisory authority concerned.

3. Article 19 shall apply to Annex 3.

4. Without prejudice to Article 20, the provisions of the United Kingdom, in respect of Gibraltar, referred to in paragraph 1 of Article 18 in the area covered by Annex 3 shall be interpreted in accordance with the relevant acts of the European Data Protection Board (hereinafter "the Board") in the same manner and under the same conditions as they apply to the Member States. This includes the opinions that the data protection supervisory authority of the United Kingdom, in respect of Gibraltar, requests or receives pursuant to Article 64 of Regulation (EU) 2016/679, with respect to rules applicable to the United Kingdom, in respect of Gibraltar, that are the same as the rules contained in Annex 3.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ EU L 119, 4.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/679/oj).

5. The data protection supervisory authority of the United Kingdom, in respect of Gibraltar, shall take utmost account of decisions taken by the competent supervisory authority pursuant to Article 60 of Regulation (EU) 2016/679 and decisions taken by the Board pursuant to Article 65 of Regulation (EU) 2016/679, when deciding on cases raising similar questions of interpretation and application of the same rules as those contained in Regulation (EU) 2016/679.

6. The reference to Member States in Article 68(3) of Regulation (EU) 2016/679 shall not be read as including the United Kingdom, in respect of Gibraltar. The data protection supervisory authority of the United Kingdom, in respect of Gibraltar, may be invited to meetings of the Board only in cases where decisions addressed to that supervisory authority are discussed or the presence of that supervisory authority is necessary and in the interest of the Union to ensure the effective application of the same rules as the Union acts in the area of data protection referred to in paragraph 1 of Article 18 in Gibraltar. In such cases, the data protection supervisory authority of the United Kingdom, in respect of Gibraltar shall participate as an expert or guest pursuant to the relevant Rules of procedure of the Board. Its participation shall be strictly limited to the relevant agenda points and it shall be referred to in the relevant documents, such as the minutes of the meeting, as the supervisory authority of the United Kingdom, in respect of Gibraltar.

7. For the purposes of this Agreement, all references to third countries and their competent authorities contained in the provisions of Union law listed in Annex 3 shall be understood as not including the United Kingdom, in respect of Gibraltar, and its competent authorities provided paragraph 2 is complied with in accordance with paragraph 1 of Article 19.

PUBLIC

8. Whenever the Union intends to adopt an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 or Article 36 of Directive (EU) 2016/680 of the European Parliament and of the Council[1], the United Kingdom, in respect of Gibraltar, shall be kept duly informed.

PUBLIC

ARTICLE 15

Global cooperation on issues of shared economic, environmental and social interest

1. The Parties recognise the importance of global cooperation to address issues of shared economic, environmental and social interest. Where it is 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 or any supplementing agreement, the Parties shall endeavour to 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 endeavour to maintain a constant and effective dialogue and to coordinate their positions in multilateral organisations and forums 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.

[1] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ EU L 119, 4.5.2016, p. 89, ELI: http://data.europa.eu/eli/dir/2016/680/oj).

ARTICLE 16

Essential elements

1. Paragraph 1 of Article 8, paragraph 1 of Article 9 and paragraph 1 of Article 10 constitute essential elements of the cooperation established by this Agreement and any supplementing agreement.

2. If either Party considers that there has been a serious and substantial failure by the other Party to fulfil any of the obligations that are described as essential elements in paragraph 1, it may decide to terminate or suspend the operation of this Agreement or any supplementing agreement in whole or in part.

3. Before doing so, the Party invoking the application of this Article shall request that the Cooperation Council meet immediately with a view to seeking a timely and mutually agreeable solution. If no mutually agreeable solution is found within 30 days from the date of the request to the Cooperation Council, the Party may take the measures referred to in paragraph 2.

4. The measures referred to in paragraph 2 shall be in full respect of international law and shall be proportionate. Priority shall be given to the measures which least disturb the functioning of this Agreement and of any supplementing agreements.

5. The Parties consider that, for a situation to constitute a serious and substantial failure to fulfil any of the obligations described as essential elements in paragraph 1, its gravity and nature would have to be of an exceptional sort that threatens peace and security or that has international repercussions. For greater certainty, an act or omission which materially defeats the object and purpose of the Paris Agreement shall always be considered as a serious and substantial failure for the purposes of this Article.

PUBLIC

TITLE III

CIVIL NUCLEAR COOPERATION

PUBLIC

ARTICLE 17

Civil nuclear cooperation

1. The Parties acknowledge the importance of international cooperation for effective nuclear safety arrangements and shall work together on the continuous improvement of international nuclear safety standards and Conventions, and of their implementation. Insofar as it does not conflict with developments in legally binding international nuclear safety standards, the United Kingdom, in respect of Gibraltar, and the Union shall not weaken or reduce the levels of protection below those provided for by the standards of protection, and by the enforcement thereof, shared by the Parties and applied in respect of Gibraltar until 31 December 2020 in relation to nuclear safety, radiation protection, safe management of radioactive waste and spent fuel, decommissioning, safe shipment of nuclear material, emergency preparedness and response, and effective control of radioactive material and radioactive sources.

2. The United Kingdom, in respect of Gibraltar, shall implement a robust and effective system of nuclear material accountancy and control aiming to ensure that nuclear material (as defined in Article XII of the Statute of the International Atomic Energy Agency) is exclusively used for peaceful purposes at such time as these arrangements are required.

3. The United Kingdom, in respect of Gibraltar, shall implement safety and security arrangements, in accordance with relevant international agreements, in relation to any relevant civil nuclear facilities and radioactive sources in Gibraltar, at such time as these arrangements are required.

4. The United Kingdom, in respect of Gibraltar, shall implement, at such time as these arrangements are required, an agreement negotiated with the IAEA for the application of safeguards in Gibraltar, and shall take steps to sign, ratify or accede to, as appropriate, and fully implement the international instruments listed in Part 1 of Annex 4 as well as, where relevant, their future amendments to the extent they are ratified by the United Kingdom. Furthermore, the United Kingdom, in respect of Gibraltar, shall take steps to follow, as appropriate, the guidance documents listed in Part 2 of Annex 4 as well as their future amendments to the extent they are used by the United Kingdom.

5. The Parties acknowledge the importance of international cooperation for effective nuclear security arrangements and shall work together on the continuous improvement of international nuclear security standards and conventions. The Union and the United Kingdom, in respect of Gibraltar, shall not weaken or reduce the levels of protection below those provided for by the standards of protection, and by the enforcement thereof, applied by the Union and the United Kingdom, in respect of Gibraltar, until 31 December 2020 in relation to physical protection.

PUBLIC

6. The United Kingdom has extended application of the Convention on Third Party Liability in the Field of Nuclear Energy concluded at Paris on 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and the Protocol of 6 November 1982 to Gibraltar. The Parties note that the United Kingdom will continue to take steps to extend the Protocol of 12 February 2004 (which came into force on 1 January 2022 in the United Kingdom) as well as any further amendments, unless a Party has notified the other Party in writing that it does not accept the amendment.

7. The United Kingdom, on behalf of Gibraltar, shall continue to maintain and periodically review operational arrangements in relation to events in, or affecting, Gibraltar, the Convention on the Early Notification of a Nuclear Accident adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986 and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986, should such an event occur. These operational arrangements are detailed in Annex 5 and their updates shall be notified to the other Party as soon as possible, but not later than 3 months after their entry into effect, and Annex 5 shall be amended accordingly.

8. With respect to the effective control of radioactive material and radioactive sources, the United Kingdom, in respect of Gibraltar, shall ensure at least equivalent effectiveness and coverage as that provided under both Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods and Council Directive 2013/59/Euratom of 5 December 2013, laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, including as amended or replaced in future.

PUBLIC

TITLE IV

PRINCIPLES OF INTERPRETATIONS AND DEFINITIONS

PUBLIC

ARTICLE 18

Public international law

1. The provisions of this Agreement and any supplementing agreement shall be interpreted in good faith in accordance with their ordinary meaning in their context and in light of the object and purpose of the agreement in accordance with customary rules of interpretation of public international law, including those codified in the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969.

2. For greater certainty, except as provided for in paragraphs 1 and 4 of Article 19 and in Article 20, neither this Agreement nor any supplementing agreement establishes an obligation to interpret their provisions in accordance with the domestic law of either Party.

3. Without prejudice to Article 20, for greater certainty, an interpretation of this Agreement or any supplementing agreement given by the courts of either Party shall not be binding on the courts of the other Party.

ARTICLE 19

Union law applicable by the United Kingdom, in respect of Gibraltar

1. The United Kingdom, in respect of Gibraltar, shall have in place in its domestic law, and effectively apply, the same provisions as those contained:

(a) in the Union acts listed in the provisions or in those Annexes to this Agreement to which this Article applies, or

(b) under the conditions laid down in paragraphs 2 to 4, in a subsequent Union act, namely:

(i) a Union act amending or replacing a Union act as referred to in subparagraph (a);

(ii) a Union act supplementing or implementing a Union act as referred to in subparagraph (a); or

(iii) another Union act on the subject matter of a Union act as referred to in subparagraph (a).

2. Where the Union adopts a subsequent Union act, it shall immediately notify the United Kingdom, in respect of Gibraltar, of the adoption of such act.

3. Within thirty days of the notification referred to in paragraph 2, the United Kingdom, in respect of Gibraltar, shall notify the Union of its decision whether to accept the content of, and to implement into its domestic law, the subsequent Union act. The acceptance by the United Kingdom, in respect of Gibraltar, of the content of a subsequent Union act shall create rights and obligations between the United Kingdom, in respect of Gibraltar, and the Union.

PUBLIC

4. If the implementation into domestic law of the subsequent Union act requires the fulfilment of constitutional requirements, the United Kingdom, in respect of Gibraltar, shall inform the Union of this at the time of the notification referred to in paragraph 3. The United Kingdom, in respect of Gibraltar, shall promptly inform the Union in writing upon fulfilment of all constitutional requirements. From the entry into force of the subsequent Union act and until the information upon fulfilment of constitutional requirements, the United Kingdom, in respect of Gibraltar, shall provisionally apply, to the largest extent possible, the same rules as those contained in the subsequent Union act.

5. If the United Kingdom, in respect of Gibraltar:

(a) notifies its decision not to accept the content of a subsequent Union act; or

(b) does not make a notification within the time limit set out in paragraph 3; or

(c) does not inform the Union, at the latest six weeks after the entry into force of a subsequent Union act, of the implementation of that act into its domestic law

this Agreement shall be considered terminated unless the Cooperation Council, after a careful examination of ways to continue the Agreement, decides otherwise within ninety days. Termination of this Agreement shall take effect three months after the expiry of the ninety days period.

PUBLIC

ARTICLE 20

Consistent interpretation

The provisions referred to in paragraph 1 of Article 19 shall be interpreted and applied in accordance with the methods and general principles of Union law and shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union.

PUBLIC

ARTICLE 21

Private rights

1. Without prejudice to paragraphs 1 and 2 of Article 19, Article SSC.70 and Titles I and II of Part Four, and with the exception, with regard to the Union, of Title V of Part Two, nothing in this Agreement or any supplementing 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 or any supplementing 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 or any supplementing agreement.

TITLE V

INSTITUTIONAL FRAMEWORK

PUBLIC

ARTICLE 22

Cooperation Council

1. A Cooperation Council is hereby established. It shall comprise representatives of the Union, and of the United Kingdom, in respect of Gibraltar. The Cooperation Council may meet in different configurations depending on the matters under discussion.

2. The Cooperation 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, in respect of Gibraltar, and, in any event, at least once a year, and shall set its meeting schedule and its agenda by mutual consent.

3. The Cooperation Council shall oversee the attainment of the objectives of this Agreement and any supplementing agreement. It shall supervise and facilitate the implementation and application of this Agreement and of any supplementing agreement. Each Party may refer to the Cooperation Council any issue relating to the implementation, application and interpretation of this Agreement or of any supplementing agreement.

4. The Cooperation Council shall have the power to:

(a) adopt decisions in respect of all matters where this Agreement or any supplementing agreement so provides;

(b) make recommendations to the Parties regarding the implementation and application of this Agreement or of any supplementing agreement;

(c) adopt, by decision, amendments to this Agreement or to any supplementing agreement in the cases provided for in this Agreement or in any supplementing agreement;

(d) except in relation to Title IV of Part One, until the end of the fourth year following the entry into force of this Agreement, adopt decisions amending this Agreement or any supplementing agreement, provided that such amendments are necessary to correct errors, or to address omissions or other deficiencies;

(e) discuss any matter related to the areas covered by this Agreement or by any supplementing agreement;

(f) delegate certain of its powers to a Specialised Committee, except those powers and responsibilities referred to in point (g) of this paragraph;

(g) by decision, establish Specialised Committees and assign tasks to them, dissolve any Specialised Committee, or change the tasks assigned to them.

5. The work of the Cooperation Council shall be governed by the rules of procedure set out in Annex 6. The Cooperation Council may amend that Annex.

PUBLIC

ARTICLE 23

Specialised Committees

PUBLIC

1. The following Specialised Committees are hereby established:

(a) the Specialised Committee on Circulation of Persons;

(b) the Specialised Committee on Economy and Trade;

(c) the Specialised Committee on Aviation.

2. With respect to issues related to their area of competence, Specialised Committees shall have the power to:

(a) monitor and review the implementation and ensure the proper functioning of this Agreement or any supplementing agreement;

(b) assist the Cooperation Council in the performance of its tasks and, in particular, report to the Cooperation Council and carry out any task assigned to them by it;

(c) adopt decisions and recommendations in respect of all matters for which the Cooperation Council has delegated its powers to a Specialised Committee in accordance with point (f) of paragraph 1 of Article 22 or where the Agreement so provides;

(d) discuss technical issues arising from the implementation of this Agreement or any supplementing agreement;

(e) provide a forum for the Parties to exchange information, discuss best practices and share implementation experience.

3. The Specialised Committees shall be informed as necessary of the implementation of the administrative arrangements concluded by the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain on matters relating to the implementation of this Agreement.

4. Specialised Committees shall comprise representatives of each Party. Each Party shall ensure that its representatives on the Specialised Committees have the appropriate expertise with respect to the issues under discussion.

5. The Specialised Committees shall be co-chaired by a representative of the Union and a representative of the United Kingdom, in respect of Gibraltar.

6. Unless otherwise provided for in this Agreement, or unless the co-chairs decide otherwise, they shall meet at least once a year.

7. Specialised Committees shall set their meeting schedule and agenda by mutual consent.

8. The work of the Specialised Committees shall be governed by the rules of procedure set out in Annex 6.

PUBLIC

9. By way of derogation from paragraph 8, a Specialised Committee may adopt and subsequently amend its own rules that shall govern its work.

PUBLIC

ARTICLE 24

Decisions and Recommendations

1. The decisions adopted by the Cooperation Council, or, as the case may be, by a Specialised Committee, shall be binding on the Parties and on all the bodies set up under this Agreement and under any supplementing agreement, including the arbitration tribunal referred to in Title I of Part Six. Recommendations shall have no binding force.

2. The Cooperation Council or, as the case may be, a Specialised Committee, shall adopt decisions and make recommendations by mutual consent.

PART TWO

CIRCULATION OF PERSONS

PUBLIC

TITLE I

GENERAL PRINCIPLES AND OBJECTIVES

ARTICLE 25

Protection of human rights and fundamental freedoms

1. The cooperation provided for in this Part is based on the Parties' and Member States' long-standing respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights, and on the importance of giving effect to the rights and freedoms in that Convention domestically.

2. Nothing in this Part modifies the obligation to respect fundamental rights and legal principles as reflected, in particular, in the European Convention on Human Rights and, in the case of the Union and its Member States, in the Charter of Fundamental Rights of the European Union.

ARTICLE 26

Definitions

PUBLIC

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

(a) "Border checks" means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States and Gibraltar or authorised to leave it;

(b) "Border control" means the activity carried out at a border, in accordance with and for the purposes of this Agreement, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;

(c) "Border surveillance" means the surveillance of borders between border crossing points and the surveillance of border crossing points outside the fixed opening hours, in order to prevent or detect unauthorised border crossings or the circumvention of border checks, to contribute to raising situational awareness, to counter cross-border criminality and to take measures against persons who have crossed the border illegally;

(d) "Civilian component" means civilian persons who are in the employ of, or contracted by, the Government of the United Kingdom and who are not persons resident in Gibraltar or in the Union, with the exception of persons who have the right to reside in the United Kingdom or the Common Travel Area;

(e) "Coercive action" means measures to be taken in respect of a person or object when performing functions related to border control, including as a follow up to alerts in databases and information systems used in the context of border control including, but not limited to, temporary limitation of movement, detention, arrest, placement under protection, inquiries, search and seizure of objects, and any other form of action in response to alerts with the purpose of investigating or gathering evidence that a crime has been committed or planned as well as refusals of entry;

(f) "Family members forming part of the household" means the spouse or partner of a member of the non-resident United Kingdom Forces or civilian component or the child of such member depending on them for support and who are not persons resident in the European Union nor in Gibraltar;

(g) "International protection" means refugee status according to the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967 and subsidiary protection status whereby a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin, or in the case of a stateless person, to their country of former habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail themselves of the protection of that country;

(h) "Member States applying the Schengen *acquis* in full" means the Member States which have abolished checks on persons at their common borders;

PUBLIC

(i) "Non-resident United Kingdom Forces" means persons serving in the United Kingdom Forces, either as regulars or reserves, who are citizens of the United Kingdom, Commonwealth citizens, citizens of Ireland or have the right to reside in the United Kingdom or the Common Travel Area and who are not persons resident in Gibraltar;

(j) "Persons resident in Gibraltar" means persons having the legal right to reside in Gibraltar irrespective of their nationality, with the exception of Union citizens and nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation as well as nationals of the Principality of Andorra and the Republic of San Marino following the entry into force of agreements conferring such nationals with free movement rights;

(k) "Second Line Check" means a further check which may be carried out in a special location away from the location at which all persons are checked (first line);

(l) "Second Line Checks Area" means a special location, as delimited in accordance with arrangements made by the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain pursuant to Article 33, where activities including second line checks and operational cooperation between the competent authorities take place;

PUBLIC

(m) "Third country national" means any person who is not:

(i) a Union citizen within the meaning of Article 20(1) of the Treaty on Functioning of the European Union or a family member of a Union citizen, irrespective of their nationality, as referred to in Articles 2 and 3 of Directive 2004/38/EC of the European Parliament and of the Council[1];

(ii) a national of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra or the Republic of San Marino and their family members, irrespective of their nationality, who, under agreements between the Union and those respective countries, enjoy rights of free movement equivalent to those referred to in subparagraph (a);

(n) "Visiting third country forces" means persons serving or who are in the employ of, or contracted by, the armed services of a NATO member or of selected partners who are not persons resident in the Union, or in Gibraltar, and who are due to arrive in Gibraltar on the invitation of the United Kingdom.

[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ EC L 158, 30.4.2004, p. 77, ELI: http://data.europa.eu/eli/dir/2004/38/oj).

ARTICLE 27

References to certain Union acts

For the purpose of this Part, references to Union acts in Article 26, 29 and the Annex referred to therein, 32, 33, 35, 36, 37, 42, 43, 46, 47, 48, 50, 51, 52, 53, 55, 61, 64, 74, 76, 86, 90, 96, 104 and 151 shall be understood to include those Union acts as amended or replaced in future as well as any Union act implementing or supplementing those Union acts.

PUBLIC

ARTICLE 28

Removal of physical barriers

All physical barriers related to the circulation of persons between the Union and Gibraltar shall be removed.

ARTICLE 29

Border crossing points

1. For the purposes of this Agreement, the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall set up border crossing points at Gibraltar port and airport, at which border checks as referred to in paragraph 2 shall be carried out.

2. All passengers entering Gibraltar from Gibraltar port or airport shall be subject to border checks at the border crossing points established pursuant to paragraph 1.

3. By way of derogation from paragraph 1, border checks may be carried out at the airport border crossing point, if the volume of traffic flows through the port allows for an efficient, high and uniform level of control at the airport border crossing point. In this case, the United Kingdom in respect of Gibraltar, and the Kingdom of Spain shall ensure that passengers and crew members arriving at the port are escorted from the port to the airport border crossing point, for the purposes of undergoing the checks referred to in Articles 33(1) and (2). The modalities for the application of this derogation shall be set out in an administrative arrangement between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain.

4. The United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall allow the use of automated border control systems at these border crossing points for their respective checks of persons resident in Gibraltar and Union citizens and their third country family members and beneficiaries of free movement rights under agreements concluded by the Union, in accordance with domestic and Union law.

5. Border checks on entry shall be carried out by the competent authorities of the United Kingdom, in respect of Gibraltar, and subsequently by the competent authorities of the Kingdom of Spain. Border checks on exit shall be carried out by the competent authorities of the Kingdom of Spain and subsequently by the competent authorities of the United Kingdom, in respect of Gibraltar.

6. Any second line checks must be carried out at the Second Line Checks Area.

PUBLIC

7. Without prejudice to Articles 32(3) and 43, entry conditions required by the competent authorities of the United Kingdom, in respect of Gibraltar, and the competent authorities of the Kingdom of Spain shall be cumulative. The United Kingdom, in respect of Gibraltar, undertakes to align entry conditions under the law of the United Kingdom, in respect of Gibraltar, to those applicable under Union law.

8. The United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall ensure that entry into Gibraltar from outside the Schengen area without controls at internal borders may only take place via the border crossing points referred to in paragraph 1.

9. Notwithstanding paragraphs 2, 5, and 8, the competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain may allow the entry into Gibraltar other than via the border crossing points, in the cases provided for by Article 5(2) (a), (b), (c) of Regulation (EU) 2016/399 of the European Parliament and of the Council[1] (the Schengen Borders Code) or Article 38 of this Agreement.

10. The United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall ensure that the necessary infrastructure is in place and maintained to allow the border crossing points referred to in paragraph 1 to be operated in a manner appropriate to the volume of traffic flows to ensure an efficient, high and uniform level of control in accordance with the Schengen Borders Code. That infrastructure shall comply with the requirements referred to in Annex 7 of this Agreement and shall be set out in the administrative arrangement between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain referred to in Article 33(5).

[1] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ EU L 77, 23.3.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/399/oj).

11. As regards Annex VI of the Schengen Borders Code, Points 2.3.1., 3.1.2, 3.1.4, 3.1.5, 3.2.1, 3.2.5 and 3.2.6 of that Annex shall apply in respect of border checks performed by the competent authorities of the Kingdom of Spain at the border crossing points established in Article 29(1). Any information to be provided under those points is to be provided simultaneously and without delay to both the competent authorities of the United Kingdom, in respect of Gibraltar, and the competent authorities of the Kingdom of Spain.

PUBLIC

ARTICLE 30

Circulation of persons between Gibraltar and the Member States

1. The Parties shall ensure that persons may circulate between Gibraltar and the Member States applying the Schengen *acquis* in full without border checks being carried out, without prejudice to the provisions on sea borders in Annex VI of the Schengen Borders Code, irrespective of their nationality.

2. Notwithstanding the first paragraph, where there is a serious threat to the public policy, public health or internal security, the Member States applying the Schengen *acquis* in full or the United Kingdom, in respect of Gibraltar, as the case may be, may exceptionally reinstate border control between Gibraltar and the territory of the Member States applying the Schengen *acquis* in full for a limited period of up to 10 days. That period may be prolonged by a period of 20 days and by subsequent periods of one month until a maximum of six months. Border control between Gibraltar and the territory of the Member States applying the Schengen *acquis* in full shall only be reinstated as a last resort, and the scope and duration of the reinstatement shall not exceed what is strictly necessary to respond to the serious threat.

3. Where any of the Member States applying the Schengen *acquis* in full or the United Kingdom, in respect of Gibraltar, decide to reinstate or prolong border control between Gibraltar and the territory of that Member State in accordance with paragraph 2, the Union, where the border control is reinstated by a Member State, or the United Kingdom, in respect of Gibraltar, where the border control is reinstated by the latter, shall inform the other Party thereof:

(a) at the latest four weeks before a planned reinstatement or prolongation or as soon as possible where the circumstances giving rise to the need to reinstate or prolong border controls become known less than four weeks before a planned reinstatement or prolongation;

(b) immediately and not later than 48 hours after a decision to reinstate or prolong border control in response to a serious threat requiring immediate action to be taken.

4. When informing the other Party of a decision to reinstate or prolong border control between Gibraltar and the territory of a Member State applying the Schengen *acquis* in full in accordance with paragraph 3, the Union, where the border control is reinstated by a Member State, or the United Kingdom, in respect of Gibraltar, where the border control is reinstated by the latter, shall provide the other Party with the following information:

(a) whether the reinstatement or prolongation takes place on the ground of a serious threat to its public policy, public health or internal security;

(b) relevant details of the ground or grounds unless there are overriding security or confidentiality reasons for not doing so;

(c) the names of the authorised crossing-points;

PUBLIC

(d) the starting date and duration of the reinstatement or prolongation; and

(e) where appropriate, the measures that could be taken by the other Party.

5. The Parties shall ensure that the public are informed in a coordinated manner of a decision to reinstate or prolong border control between Gibraltar and the territory of the Member States applying the Schengen *acquis* in full, in particular the start and end dates and scope of the reinstatement, unless there are overriding security reasons for not doing so.

PUBLIC

ARTICLE 31

Union databases

Under this Agreement, the competent authorities of the United Kingdom, in respect of Gibraltar, shall have no access to information systems and databases established on the basis of Union law.

TITLE II

BORDER CROSSING

PUBLIC

ARTICLE 32

Border control by the competent authorities of the United Kingdom, in respect of Gibraltar

1. For the purposes of this Agreement, the competent authorities of the United Kingdom, in respect of Gibraltar, shall exercise border control, comprising border checks and border surveillance, in accordance with Gibraltar Immigration, Asylum and Refugee Act, as amended or replaced.

2. Where, following border checks carried out by the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain as referred to in Article 29(2), the competent authorities of the United Kingdom, in respect of Gibraltar, intend to refuse entry to a person and there is no requirement for other coercive action to be taken in accordance with Article 34(3), they shall immediately inform the competent authorities of the Kingdom of Spain at the border crossing point and escort the person to the Second Line Checks Area, where the competent authorities of Kingdom of Spain shall review whether the entry conditions under Union law are complied with, in accordance with Article CIRCPERS.33 and without prejudice to the possibility for the Kingdom of Spain to authorise entry in application of Article 6(5) of the Schengen Borders Code.

3. Where, on the basis of the review referred to in paragraph 2, it becomes apparent to the competent authorities of the Kingdom of Spain that the person concerned is a person having the right of free movement under Union law, including a beneficiary of free movement rights under agreements concluded by the Union, or a third country national holding a long-stay visa or a residence permit issued by a Member State applying the Schengen *acquis* in full, and who fulfils entry and stay conditions under Union law, the competent authorities of the Kingdom of Spain shall allow the person to enter the Member States applying the Schengen *acquis* in full, without prejudice to the possibility to take measures under Article 33(4)(c)(ii). The competent authorities of the United Kingdom, in respect of Gibraltar, shall allow such a person to enter the Kingdom of Spain or a Member State applying the Schengen *acquis* in full.

ARTICLE 33

Border control by the competent authorities of the Kingdom of Spain

1. For the purpose of this Agreement the competent authorities of the Kingdom of Spain shall perform any functions which are required to exercise border control, comprising border checks and border surveillance, as set out in the Schengen Borders Code and related tasks under Union law.

2. Border checks are to be carried out at the border crossing points, established in Article 29(1), to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Kingdom of Spain or authorised to leave it.

3. Border surveillance is to be carried out between border crossing points in Gibraltar including the surveillance of border crossing points outside the fixed opening hours, in order to prevent persons from circumventing border checks and prevent or detect unauthorised border crossings.

4. Functions as referred to in paragraph 1 shall include:

(a) Border check functions inter alia, comprising the right to:

(i) perform border checks on persons, including second line checks, in accordance with the Schengen Borders Code;

(ii) refuse entry to third country nationals who do not fulfil the entry conditions laid down in Article 6(1) of the Schengen Borders Code, other than persons resident in Gibraltar, and persons belonging to the categories set out in Article 6(5) of the Schengen Borders Code. Where the third country national who has been refused entry was brought to the border by a carrier and pending onward transportation in accordance with the obligations of carriers referred to in Article 36, take appropriate measures to prevent the third country national who have been refused entry from entering illegally;

(b) Border surveillance functions inter alia, comprising the right to:

(i) prevent unauthorised border crossings, and take measures against persons who have crossed the border illegally, including apprehending such persons and ensuring their return in accordance with the provisions respecting Directive 2008/115/EC of the European Parliament and of the Council[1];

(ii) perform border surveillance in such a way as to prevent and discourage persons from circumventing the checks at border crossing points, by means of stationary or mobile units;

[1] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ EC L 348, 24.12.2008, p. 98, ELI: http://data.europa.eu/eli/dir/2008/115/oj).

(c) Functions carried out both for border checks and border surveillance inter alia, comprising the right to:

(i) use IT systems and information systems processing personal data in accordance with national, Union and international law, take all necessary follow-up actions or actions to be taken in accordance with national, Union and international law and establish the technical and organisational security measures required by national, Union and international law to protect personal data against accidental or unlawful destruction or accidental loss, alteration and unauthorised disclosure or access, including access by third-country authorities;

(ii) arrest, search, detain, interview, place under protection a person, or seize or search property, where it is justified in the course of border control carried out by the competent authorities of the Kingdom of Spain and in accordance with Spanish, Union and international law;

(iii) accept applications for international protection presented by any third-country national or stateless person presenting to the competent authorities of the Kingdom of Spain.

5. The competent authorities of the United Kingdom, in respect of Gibraltar, shall, where necessary, assist the competent authorities of the Kingdom of Spain in the exercise of their functions referred to in this Article and facilitate the exercise of these functions.

6. Administrative arrangements between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall set out the practical arrangements concerning the performance of the duties of the competent authorities of the Kingdom of Spain, operational cooperation aspects relating to border control and the layout for how border checks will be conducted at the border crossing points.

PUBLIC

ARTICLE 34

Follow up actions to border checks – alerts in information systems

1. In the performance of tasks in accordance with Articles 32 and 33, the competent authorities of the United Kingdom, in respect of Gibraltar, and the competent authorities of the Kingdom of Spain shall, respectively, follow up on alerts in their respective databases and information systems, in accordance with the applicable domestic and Union law.

2. Where alerts in the respective databases and information systems require coercive action to be taken, the person concerned shall be escorted to the Second Line Checks Area, with the exception of the situation under the second subparagraph.

Where the discreet collection of information is required on the basis of an alert in a database or information system operated by the competent authorities of the United Kingdom, in respect of Gibraltar, and by the competent authorities of the Kingdom of Spain, the escorting of the person to the Second Line Checks Area would jeopardise the discreet nature of any measures to be taken, the authority which identified the alert shall be authorised to collect as much information as is possible during routine border checks.

3. Where coercive action is required on the basis of alerts existing only in the databases and information systems operated by the United Kingdom, in respect of Gibraltar, the competent authorities of the United Kingdom, in respect of Gibraltar, shall take the appropriate follow up actions under the applicable domestic law of the United Kingdom, in respect of Gibraltar.

PUBLIC

4. Where coercive action is required on the basis of alerts existing only in the databases and information systems operated by the Kingdom of Spain, the competent authorities of the Kingdom of Spain shall take the appropriate follow up actions under national and Union law.

5. Where coercive action for arrest or detention of a person is required on the basis of paragraphs 3 and 4, the following procedure shall apply, as appropriate:

(a) In the course of entry border checks, the person shall not object to the arrest or detention; or alternatively the person shall be given the choice to be refused entry;

(b) In the course of exit border checks, the person shall not object to the arrest or detention; or alternatively, the person shall be given the choice to be required to exit.

6. Where coercive action is required both on the basis of alerts existing in the databases and information systems operated by the competent authorities of the United Kingdom, in respect of Gibraltar, and those of the Kingdom of Spain, the competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain shall agree on the authority which will carry out the action in question or carry it out first, and, where appropriate, on any follow-up, with the exception of situations under paragraphs 7 and 9.

PUBLIC

7. Where coercive action for arrest and detention of persons or seizure of objects is required both on the basis of alerts existing in the databases and information systems operated by the competent authorities of the United Kingdom, in respect of Gibraltar, and the competent authorities of the Kingdom of Spain, and such coercive action can only be carried out by one of these authorities, the action shall be taken by the competent authorities of Spain, in accordance with the applicable national and Union law. However, in exceptional cases, a stay of arrest and detention where there are individual human rights concerns or where there are conflicting international obligations concerning extradition, may be requested by the relevant competent authority. In such case, the issues must be resolved by the relevant authorities before any removal takes place.

8. The competent authorities of either the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain, shall notify the other competent authorities of the termination of coercive action carried out pursuant to paragraphs 6 and 7 with a view to enabling the other competent authorities, where appropriate, and with the exception of situations under paragraph 9, follow-up action to be carried out on the basis of alerts existing in the databases and information systems operated by the competent authorities.

9. Where coercive action for arrest or detention is required by the competent authorities of the Kingdom of Spain, and the person concerned is a person resident in Gibraltar, the action may only be carried out by the competent authorities of the United Kingdom, in respect of Gibraltar. The competent authorities of the United Kingdom, in respect of Gibraltar shall, upon request by the competent authorities of the Kingdom of Spain and following receipt of such information as is necessary to enable lawful execution of the coercive action, carry out the requested action with a view to enabling the Kingdom of Spain to take follow-up action to be carried out on the basis of alerts existing in databases and information systems operated by its competent authorities. The competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of Spain of the coercive action carried out with a view to a fast extradition pursuant to the first paragraph.

PUBLIC

10. In all cases of arrest under this Article, the person shall be provided with appropriate procedural safeguards prior to any decision or choice.

11. This Article is without prejudice to the obligations of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain under the Statute of the International Criminal Court.

PUBLIC

ARTICLE 35

Follow up actions to border control – refusals of entry

1. The competent authorities of the United Kingdom, in respect of Gibraltar, shall enforce a refusal of entry in respect of third country nationals who do not fulfil entry conditions under the law of the United Kingdom, in respect of Gibraltar, only, in accordance with Article 32.

2. The competent authorities of the Kingdom of Spain shall enforce a refusal of entry in respect of third country nationals who do not fulfil entry conditions under Union law, only, in accordance with Article 33(4)(a)(ii), and who have not been authorised to enter in application of Article 6(5) of the Schengen Borders Code.

3. The competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain, shall jointly enforce a refusal of entry in respect of third country nationals who do not fulfil entry conditions under both the law of the United Kingdom, in respect of Gibraltar, and Union law, in accordance with Articles CIRCPERS.32 and CIRCPERS.33(4)(a)(ii).

4. Refusals of entry in accordance with this Article shall be enforced after any action which may have been taken as a follow up to an alert existing in the databases and information systems of the competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain in accordance with Article 34.

PUBLIC

ARTICLE 36

Carriers' Liability

Article 26 of the Convention Implementing the Schengen Agreement and Council Directive 2001/51/EC of 28 June 2001[1] shall apply to the United Kingdom, in respect of Gibraltar, and in Gibraltar, for the transport to Gibraltar by sea or air from a third country of persons other than Union citizens, nationals of Iceland, the Kingdom of Norway, the Swiss Confederation, the Principality of Liechtenstein, and nationals of the Principality of Andorra and the Republic of San Marino following the entry into force of agreements conferring such nationals with free movement rights, third country nationals who do not possess the necessary travel documents for entry into the Member States except Ireland.

Article 19 shall apply.

[1] Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ EC L 187, 10.7.2001, p. 45, ELI: http://data.europa.eu/eli/dir/2001/51/oj).

ARTICLE 37

Advance Passenger Information

The United Kingdom, in respect of Gibraltar, shall ensure that carriers transfer Advance Passenger Information (API) concerning flights originating outside the Schengen area and arriving in the airport to the authorities of the Kingdom of Spain. The API data as well as its transfer shall comply with the requirements of Council Directive 2004/82/EC[1].

Article 19 shall apply.

ARTICLE 38

Entry and exit of non-resident United Kingdom forces,
their civilian component, their family members forming part of the household
and visiting third-country forces

1. On the conditions specified in paragraph 2 and subject to compliance with the formalities established in this Agreement relating to entry and exit of members of non-resident United Kingdom Forces or of visiting third-country forces, such persons shall be exempt from passport and visa regulations and the Schengen border checks in accordance with Article 33 at the Schengen border crossing points referred to in Article 29(1), but they shall not be considered as acquiring any right to permanent residence or domicile in the Schengen area.

[1] Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ EC L 261, 6.8.2004, p. 24, ELI: http://data.europa.eu/eli/dir/2004/82/oj).

2. Only the following documents shall be required for the registration of members of non-resident United Kingdom Forces or of visiting third country forces, to be presented at the Schengen border crossing points:

(a) personal identity card issued by the Ministry of Defence of the United Kingdom or the Ministry of Defence of the visiting third-country force showing names, date of birth, rank and number (if any), service, and photograph;

(b) individual or collective movement order, in the Spanish and English languages, issued by the Ministry of Defence of the United Kingdom and certifying the status of the individual or group as a member or members of a non-resident United Kingdom Force or of a visiting third-country force and to the movement ordered;

Any data collected for the purposes of this paragraph shall be used exclusively for border security at the border crossing points established under Article CIRCPERS.29.

3. In respect of the entry and exit of non-resident United Kingdom Forces, of those residence permit holders who are entitled to the provision in Article 50(13) and 51(12), of visiting third-country forces and of the civilian component arriving and exiting aboard State aircraft or State vessels, the United Kingdom shall make information available to the Kingdom of Spain necessary for the identification of such persons. The identification of these persons upon arrival or departure shall take place by the Liaison Officers designated in accordance with an administrative arrangement between the Kingdom of Spain and the United Kingdom. Family members forming part of the household shall be directed to the border crossing points.

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4. On the conditions specified in paragraph 5 and subject to compliance with the formalities established in this Agreement relating to entry and exit of the members of the civilian component of non-resident United Kingdom Forces and family members forming part of the household, such persons shall be exempt from passport and visa regulations and immigration inspection at Schengen border checks in accordance with Article 33 at the Schengen border crossing points referred to in Article 29(1), but they shall not be considered as acquiring any right to permanent residence or domicile in the Schengen area.

5. Only the following documents shall be required for the registration of members of the civilian component of non-resident United Kingdom Forces and family members forming part of the household who are nationals of the United Kingdom or who have the right to reside in the United Kingdom or the Common Travel Area. They must be presented at the Schengen border crossing points referred to in Article 29(1):

(a) valid United Kingdom passport or United Kingdom travel document or residence permit of the United Kingdom;

(b) individual or collective movement order, in the Spanish and English languages, issued by the Ministry of Defence of the United Kingdom and certifying the status of the individual or group as a member or members of the civilian component of non-resident United Kingdom Forces or family members forming part of the household, and to the movement ordered;

Any data collected for the purposes of this paragraph shall be used exclusively for border security at the border crossing points referred to in Article 29(1).

PUBLIC

6. Members of the civilian component or family members forming part of the household who are not citizens of the United Kingdom or who do not have the right to reside in the United Kingdom or the Common Travel Area shall be subject to Schengen border checks as foreseen in Article 33. These persons shall not undergo additional Schengen border checks to exit or enter a Member State applying the Schengen *acquis* according to paragraph 7 provided that their entry or exit has been authorized according to this paragraph.

7. Those members of non-resident United Kingdom Forces, of visiting third-country forces, of the civilian component and family members forming part of their household, that wish to exit or enter a Member State applying the Schengen *acquis* in full shall be subject to the Schengen border checks in accordance with Article 33 at the Schengen border crossing points referred to in Article 29(1). The United Kingdom and the Kingdom of Spain shall inform these persons of the obligation to undergo such checks and of the possibility that they may be subject to disciplinary action if they fail to do so, without prejudice to the application of Union acts governing the return of illegally staying third-country nationals. Regularly constituted units or formations shall not be allowed to enter or exit the Schengen area through the border crossing points referred to in Article 29(1).

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TITLE III

SAFEGUARDS

CHAPTER 1

RESIDENCE IN GIBRALTAR,
SPECIAL RULES, ISSUANCE OF RESIDENCE PERMITS AND VISAS

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ARTICLE 39

Scope

For the purpose of this Chapter, references to the Member States shall be understood as references to all Member States except Ireland.

ARTICLE 40

Relation with EU law

This Agreement shall be without prejudice to any rights or obligations that persons resident in Gibraltar may have under Union law.

ARTICLE 41

Visa free travel

1. Citizens of the Union, their third-country family members who hold a residence card under Directive 2004/38/EC of the European Parliament and of the Council, and third country nationals legally residing in the Member States applying the Schengen *acquis* in full may enter and stay in Gibraltar without a visa for a maximum period of 90 days in any 180-day period.

Persons resident in Gibraltar may enter and stay, without a visa for a maximum period of 90 days in any 180-day period, in the territory of Member States applying the Schengen *acquis* in full.

For entry and stay without a visa for a maximum period of 90 days in any 180-day period in the territory of Member States other than those applying the Schengen *acquis* in full, the authorised period of stay shall be calculated separately for each of these Member States.

2. Notwithstanding the second subparagraph of paragraph 1, each Member State may decide to impose a visa requirement on persons resident in Gibraltar travelling for the purpose of carrying out a paid activity.

Notwithstanding the first subparagraph of paragraph 1, for persons referred to in that subparagraph, the United Kingdom, in respect of Gibraltar, may decide to impose a visa requirement on such persons travelling for the purposes of carrying out a paid activity.

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ARTICLE 42

Facilitations at the external borders

1. When crossing the external borders of a Member State, including the border crossing points referred to in Article 29(1), no entry or exit stamp shall be affixed to the travel documents of persons resident in Gibraltar.

Persons resident in Gibraltar shall be exempt from the requirements of the Entry Exit System.

2. When crossing the external borders of a Member State, including the border crossing points referred to in Article 29(1), persons resident in Gibraltar shall be exempt from the requirement to be in possession of a valid travel authorisation pursuant to Regulation (EU) 2018/1240 of the European Parliament and of the Council[1].

ARTICLE 43

Entry into Gibraltar

1. Persons resident in Gibraltar shall not be subject to verifications with regard to fulfilment of the conditions laid down in point (c) of Article 6(1) of the Schengen Borders Code at the border crossing points established under Article CIRCPERS.29(1), for the purposes of entering Gibraltar.

[1] Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ EU L 236, 19.9.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1240/oj).

2. Persons resident in Gibraltar who do not fulfil the other entry conditions laid down in Article 6(1) of the Schengen Borders Code, shall in any event not be prevented from crossing the border crossing points established under Article 29(1) for the purposes of entering Gibraltar.

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ARTICLE 44

Entry to the Member States for transit purposes

Persons resident in Gibraltar who do not fulfil all the entry conditions laid down in Article 6(1) of the Schengen Borders Code shall be authorised to enter the territory of the Member States for transit purposes so that they may reach Gibraltar, unless their names are on the national list of alerts of the Member State whose external borders they are seeking to cross and the alert is accompanied by instructions to refuse entry or transit.

ARTICLE 45

Right of residence in Gibraltar

1. A legal right to reside in Gibraltar shall be proven on the basis of a person holding a valid identity card or residence permit issued in Gibraltar by the competent authorities of the United Kingdom, in respect of Gibraltar, and subject to the conditions set out in this Article.

2. The United Kingdom, in respect of Gibraltar, shall ensure that identity cards and residence permits issued in Gibraltar are issued only to persons who meet the conditions for entitlement to such identity card or residence permit set out in the legislation in force on the date of entry into force of this Agreement.

3. The United Kingdom, in respect of Gibraltar, shall ensure that the conditions for entitlement to an identity card issued in Gibraltar in the legislation referred to in paragraph 2 are consistent with international law.

4. The United Kingdom, in respect of Gibraltar, shall inform the Cooperation Council whenever changes are proposed to be made to the conditions in the legislation referred to in paragraph 2 after the date of entry into force of this Agreement. The Cooperation Council shall, within one month of being so informed, provide its opinion on whether or not such changes are compatible with this Agreement. Such changes shall not, in any event, make it possible for a person to be able to obtain:

(a) an identity card issued in Gibraltar, on the basis of prior residence in Gibraltar, unless they have been resident in Gibraltar for a continuous period of at least ten years immediately prior to the date of application for the card;

(b) a residence permit issued in Gibraltar unless they are able to demonstrate a genuine connection with Gibraltar.

5. The condition in point (b) of paragraph 4 shall be established on the basis of a person being able to demonstrate actual and regular physical presence in Gibraltar over an appropriate period of time or on the basis of other objective and verifiable criteria.

6. The conditions for entitlement to an identity card issued by the competent authorities of the United Kingdom in respect of Gibraltar on a basis other than prior residence as well as the condition for entitlement to a residence permit referred to in point (b) of paragraph 4 shall not be met:

(a) on the basis of predetermined investments having been made in Gibraltar's economy or real estate; or

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(b) as a result of any predetermined financial payments having been made to the Gibraltar authorities.

7. Subject only to Article 52, the United Kingdom, in respect of Gibraltar, shall ensure that residence permits issued in Gibraltar are issued or renewed only in accordance with the procedure set out in Articles 50 and 51.

8. Residence permits issued to persons who no longer meet the conditions in point (b) of paragraph 4 shall be withdrawn.

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ARTICLE 46

Enhanced notification for persons resident in Gibraltar

1. The United Kingdom, in respect of Gibraltar, shall regularly review potential risks resulting from the possibility for persons resident in Gibraltar to travel to the territory of the Member States where the Schengen *acquis* is applied in full, and shall regularly, and at a minimum, every three months, provide such a risk assessment to the Kingdom of Spain. In carrying out such risk assessment, the United Kingdom, in respect of Gibraltar, shall have regard to all relevant information at its disposal, including in connection with enforcement and counter-terrorist investigations and operations.

Where the United Kingdom, in respect of Gibraltar, has grounds to consider that a person resident in Gibraltar could pose a serious threat to public policy or internal security, public health or the international relations of a Member State, it shall inform the Kingdom of Spain without delay setting out the grounds upon which that assessment is based.

Article 6(1) shall not apply to exchange of information under the second sub-paragraph.

2. If, on the basis of information received pursuant to paragraph 1, or on the basis of any other information, the Kingdom of Spain considers that a person resident in Gibraltar constitutes a sufficiently serious threat to public policy or internal security, public health or its international relations, and on these grounds decides that the individual is prohibited from leaving Gibraltar to travel to the territory of the Member States applying the Schengen *acquis* in full, it shall notify the authorities of the United Kingdom, in respect of Gibraltar, of that prohibition.

The notification shall set out the reasons for the prohibition, as well as the means by which the person concerned may appeal the prohibition before a national court of the Kingdom of Spain. The lodging of an appeal shall not be required to have suspensive effect on a decision to prohibit entry.

Article 6(1) shall not apply to exchange of information under the second sub-paragraph.

3. Where the United Kingdom, in respect of Gibraltar, has received a notification referred to in paragraph 2, it shall:

(a) inform the person concerned of the notification and the content thereof;

(b) take all necessary steps to prevent prohibited travel to the Schengen area, including through police and judicial cooperation with the Kingdom of Spain.

4. This Article shall not apply to:

(a) family members of Union citizens, irrespective of their nationality, referred to in Articles 2 and 3 of Directive 2004/38/EC;

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(b) family members, irrespective of their nationality, of nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino, who under agreements concluded by the Union enjoy rights of free movement equivalent to those referred to in point (a).

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ARTICLE 47

Short stay visas in respect of Gibraltar

1. Nationals of third countries required to be in possession of a short stay visa to enter and stay in the Member States in accordance with Union law shall also be required to be in possession of a visa to enter and stay in Gibraltar.

2. Nationals of third countries exempt from the requirement to be in possession of a short stay visa to enter and stay in the Member States in accordance with Union law shall not be required to be in possession of a visa to enter and stay in Gibraltar.

3. Short-stay visas issued in accordance with Union law, in particular Regulations (EC) No 810/2009 of the European Parliament and of the Council[1] and (EU) 2018/1806 of the European Parliament and of the Council[2], shall also be valid for entry and stay in Gibraltar for a maximum period of 90 days in any 180-day period. Where the main purpose is to stay in Gibraltar, the Kingdom of Spain, the neighbouring Member State, shall issue the visa.

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[1] Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ EC L 243, 15.9.2009, p. 1, ELI: http://data.europa.eu/eli/reg/2009/810/oj).

[2] Regulation (EU) 2018/1806 of the European Parliament and of 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 (OJ EU L 303, 28.11.2018, p. 39, ELI: http://data.europa.eu/eli/reg/2018/1806/oj).

4. The Kingdom of Spain shall notify the United Kingdom, in respect of Gibraltar, when it intends to issue a visa in accordance with the second sentence of paragraph 3. Where the United Kingdom, in respect of Gibraltar, considers that a visa should not be issued in accordance with the second sentence of paragraph 3, on account of sufficiently serious reasons pertaining to public policy, internal security or public health, including on the basis of an alert issued in Gibraltar, it shall inform the Kingdom of Spain. In that case, any visa issued by the Kingdom of Spain, by derogation from paragraph 3, shall not be valid for entry and stay in Gibraltar, which shall be marked in the "comments" section of the visa. Article 6(1) shall not apply to notifications under this paragraph.

5. Visas other than those issued pursuant to paragraph 3 and pursuant to Article 47 shall not be valid for entry and stay in Gibraltar.

ARTICLE 48

Exceptional external borders visas in respect of Gibraltar

1. This Article applies when, following the completion of border checks, a person who is not in possession of a valid visa required to enter Gibraltar or the Member States, expresses the wish to enter and stay only in Gibraltar.

2. In the case referred to in paragraph 1, the competent authorities of the United Kingdom, in respect of Gibraltar, may exceptionally issue a short-stay visa at the external border crossing points established pursuant to Article 29(1) when there are compelling grounds to do so on humanitarian grounds, if the following conditions are fulfilled:

(a) the applicant submits supporting documents or other evidence substantiating unforeseeable and imperative reasons for entry on humanitarian grounds;

(b) the applicant satisfies the conditions for entry, other than compliance with one or more of the following conditions:

(i) holding a visa, required by the competent authorities of the United Kingdom, in respect of Gibraltar, and by the competent authorities of the Kingdom of Spain;

(ii) having stayed in the territory of the Member States for no more than 90 days in any 180-day period;

(iii) being in possession of a valid travel document that entitles the holder to cross the border and that satisfies the following criteria:

a) its validity extends at least three months after the intended date of departure;

b) it has been issued within the previous 10 years; and

(c) the applicant's return to their country of origin or residence or transit through States other than Member States applying the Schengen *acquis* in full is assessed as certain.

3. A visa exceptionally issued at the external borders in accordance with paragraph 2 shall be valid only for the territory of Gibraltar, entitling the holder to stay there for a maximum duration of 15 days, depending on the purpose and conditions of the intended stay. The period of the duration of stay may subsequently be extended by a maximum of 15 days if the competent authorities of the United Kingdom, in respect of Gibraltar, consider that the visa holder has provided proof of force majeure or humanitarian reasons preventing them from leaving. It shall not give the holder the right to enter the territory of the Member States.

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4. Where the Kingdom of Spain considers that a visa should not be issued or extended in accordance with paragraphs 2 and 3 because there are sufficiently serious reasons pertaining to public policy, internal security or public health, including on the basis of an alert issued in the Schengen Information System, it shall inform the United Kingdom, in respect of Gibraltar, of its objection to issuance of such a visa. In that case, the United Kingdom, in respect of Gibraltar, shall refrain from issuing a visa at the external borders in accordance with paragraph 2.

5. When the United Kingdom, in respect of Gibraltar, decides to issue or extend a visa in accordance with paragraphs 2 or 3, it shall allow the competent authorities of the Kingdom of Spain to record the data of the applicant, including biometric identifiers, that is required for visa issuance or extension in accordance with Union law, in particular with the provisions of Regulation (EU) 2018/1806 of the European Parliament and of the Council, of Regulation (EC) No 810/2009 of the European Parliament and of the Council and of Regulation (EC) No 767/2008 of the European Parliament and of the Council[1]. The Kingdom of Spain shall enter these data into the Visa Information System, adding information indicating that the visa has been issued with territorial validity limited to the territory of Gibraltar pursuant to this Article.

6. The number of visas pursuant to paragraph 2 shall not exceed 15 in each calendar year. That number of visas issued each calendar year may be amended by decision of the Cooperation Council.

7. Visas issued pursuant to paragraph 2 shall be issued in a format to be determined by the competent authorities of the United Kingdom, in respect of Gibraltar. The United Kingdom, in respect of Gibraltar, shall provide the Kingdom of Spain with specimens of such visas and any subsequent modification thereto for information purposes.

[1] Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of information between Member States on short-stay visas and residence permits (VIS Regulation) (OJ EC L 218, 13.8.2008, p. 60, ELI: http://data.europa.eu/eli/reg/2008/767/oj).

ARTICLE 49

Long stay visas valid for Gibraltar

Long stay visas valid for Gibraltar shall not be issued.

PUBLIC

ARTICLE 50

Residence permits in respect of Gibraltar

1. The competent authorities of the United Kingdom, in respect of Gibraltar, shall be responsible for issuing or renewing residence permits in respect of Gibraltar. Such residence permits may only be issued or renewed, where the relevant conditions under Article 45 are fulfilled.

2. Before issuing or renewing a residence permit, the competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of Spain.

3. Within 28 calendar days of being notified under paragraph 2, the competent authorities of the Kingdom of Spain may inform the competent authorities of the United Kingdom, in respect of Gibraltar, of their objection to the issuance or renewal of a residence permit where the applicant is considered, in accordance with the Schengen *acquis*, to be a threat to public policy[1], internal security, public health or the international relations of any of the Member States, including on the basis of an alert issued in the Schengen Information System. In that case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall not issue or renew the residence permit, and shall inform the applicant of the outcome and provide to the applicant the contact details of the competent authorities of the Kingdom of Spain. Upon request of the applicant, the competent authorities of the Kingdom of Spain shall, with due regard to their obligations under national and Union law, inform the applicant of:

(a) its decision to object to the issuing or renewing of a residence permit;

(b) the grounds for objecting to the issuing or renewing of the residence permit, considering the applicant to be a threat to public policy, or internal security, public health or the international relations, accompanied, where appropriate, by the essence of the reasons; and

(c) the appropriate remedies in accordance with national and Union law.

Article 6(1) shall not apply to this paragraph.

[1] Measures taken on the grounds of public policy shall be proportionate and shall be based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

4. The competent authorities of the Kingdom of Spain may notify the competent authorities of the United Kingdom, in respect of Gibraltar, that the period of 28 calendar days referred to in paragraph 3 is extended by a maximum of 14 calendar days. The absence of a response by the expiry of that 28 calendar days period shall be considered a positive response. In any case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall refrain from issuing or renewing a residence permit before the end of the period provided in this paragraph.

Article 6(1) shall not apply to this paragraph.

5. Where there are grounds to object to a person holding a residence permit, including when the holder is considered to be a threat to public policy, internal security, public health or the international relations of a Member State, including on the basis of an alert issued in the Schengen Information System, the competent authorities of the Kingdom of Spain shall request the competent authorities of the United Kingdom, in respect of Gibraltar, to withdraw that residence permit. In that case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall withdraw the residence permit without delay and shall provide to the holder the contact details of the competent authorities of the Kingdom of Spain. Upon request of the holder, the competent authorities of the Kingdom of Spain shall, with due regard to its obligations under national and Union law, inform the holder of:

(a) Its decision to request the withdrawal of a residence permit;

(b) the grounds for considering the holder to be a threat to public policy, or internal security, public health or the international relations accompanied, where appropriate, by the essence of the reasons; and

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(c) the appropriate remedies in accordance with national and Union law.

Article 6(1) shall not apply to this paragraph.

6. Where, a residence permit is issued, or not withdrawn, because the competent authorities of the Kingdom of Spain have not objected to it pursuant to paragraphs 3 or 5 and despite an alert in the Schengen Information System for the purposes of refusing entry, or for the purposes of return, that residence permit does not give the holder the right to enter the territory of the Member States.

7. A residence permit in respect of Gibraltar shall comply with the uniform format laid down in Union law and shall bear clear indications that it is valid for Gibraltar.

8. The United Kingdom, in respect of Gibraltar, shall provide the Kingdom of Spain with specimens of permits in respect of Gibraltar and any subsequent modification thereto for the purpose of Spain notifying these to the Commission in line with the procedure in Article 39(1)(a) of the Schengen Borders Code.

9. The Kingdom of Spain shall designate, in accordance with Article 68, the authority responsible for receiving the information pursuant to this Article. The United Kingdom, in respect of Gibraltar, shall notify, in accordance with Article 68, the authority responsible for receiving applications for residence permits, issuing or renewing residence permits in respect of Gibraltar and submitting information to the Kingdom of Spain pursuant to this Article.

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10. This Article shall apply until the date on which the Visa Information System (VIS) operations start pursuant to Regulation (EU) 2021/1134 of the European Parliament and of the Council[1]. From that date, Article 51 shall apply.

11. The Union shall inform the United Kingdom, in respect of Gibraltar, of the date on which the operations referred to in paragraph 9 will start, in advance of that date.

12. Paragraphs 2 to 6 shall not apply to:

(a) Union citizens and family members of Union citizens, irrespective of their nationality, referred to in Articles 2 and 3 of Directive 2004/38/EC;

(b) nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino and their family members, irrespective of their nationality, who under agreements concluded by the Union enjoy rights of free movement equivalent to those referred to in point (a).

13. In the case of persons and family members forming part of their household posted in service to United Kingdom forces or to the United Kingdom, in respect of Gibraltar, where the competent authorities of the Kingdom of Spain have objected to the issuance of the residence permit in accordance with paragraph 3, they shall be issued a residence permit with territorial validity limited to Gibraltar.

[1] Regulation (EU) 2021/1134 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System (OJ EU L 248, 13.7.2021, p. 11, ELI: http://data.europa.eu/eli/reg/2021/1134/oj).

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ARTICLE 51

Residence permits in respect of Gibraltar

1. The competent authorities of the United Kingdom, in respect of Gibraltar, shall be responsible for issuing or renewing residence permits in respect of Gibraltar. Such residence permits may only be issued or renewed, where the relevant conditions under Article 45 are fulfilled.

2. Before issuing or renewing a residence permit, the competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of Spain.

3. Without prejudice to paragraph 1, the competent authorities of the United Kingdom, in respect of Gibraltar, shall ensure that the data necessary for the Kingdom of Spain to be able to comply with Chapter III of Regulation (EC) No 767/2008 with regard to applications for residence permits made in Gibraltar, is collected and transferred to the competent authorities of the Kingdom of Spain within 2 working days of the application being made.

In this respect, the competent authorities of the United Kingdom, in respect of Gibraltar, shall ensure that:

(a) the data collected is accurate, up to date and of an adequate level of quality and completeness;

(b) has been collected lawfully, respecting the safeguards laid down in that Chapter;

(c) the applicant has been provided with the information referred to in Articles 37(1) and (2) of Regulation (EC) No 767/2008; and

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(d) the applicant provides at the time of application consent to the processing of their data in line with the provisions of Regulation (EC) No 767/2008.

4. Within 28 calendar days of being notified under paragraph 2, the competent authorities of the Kingdom of Spain may inform the competent authorities of the United Kingdom, in respect of Gibraltar, of their objection to the issuance or renewal of a residence permit, where the applicant is considered, in accordance with the Schengen *acquis*, to be a threat to public policy[1], internal security, public health or the international relations of any of the Member States, including on the basis of an alert issued in the Schengen Information System. In that case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall not issue or renew the residence permit and shall inform the applicant of the outcome and provide to the applicant the contact details of the competent authorities of the Kingdom of Spain. Upon request of the applicant, the competent authorities of the Kingdom of Spain shall, with due regard to their obligations under national and Union law, inform the applicant of:

(a) their decision to object to the issuing or renewing of a residence permit;

(b) the grounds for objecting to the issuing or renewing of the residence permit, considering the applicant to be a threat to public policy, or internal security, public health or the international relations, accompanied, where appropriate, by the essence of the reasons; and

(c) the appropriate remedies in accordance with national and Union law.

Article 6(1) shall not apply to this paragraph.

[1] Measures taken on the grounds of public policy shall be proportionate and shall be based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

5. The competent authorities of the Kingdom of Spain may notify the competent authorities of the United Kingdom, in respect of Gibraltar, that the period of 28 calendar days referred to in paragraph 3 is extended by a maximum of 14 calendar days. The absence of a response by the expiry of that 28 calendar days period shall be considered a positive response. In any case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall refrain from issuing or renewing a residence permit before the end of the period provided in this paragraph.

Article 6(1) shall not apply to this paragraph.

6. Where there are grounds to object to a person holding a residence permit, including when the holder is considered to be a threat to public policy, internal security, public health or the international relations of a Member State, including on the basis of an alert issued in the Schengen Information System, the competent authorities of the Kingdom of Spain shall request the competent authorities of the United Kingdom, in respect of Gibraltar, to withdraw that residence permit. In that case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall withdraw the residence permit without delay and shall provide to the holder the contact details of the competent authorities of the Kingdom of Spain. Upon request of the holder, the competent authorities of the Kingdom of Spain shall, with due regard to their obligations under national and Union law, inform the holder of:

(a) their decision to request the withdrawal of a residence permit;

(b) the grounds for considering the holder to be a threat to public policy, or internal security, public health or the international relations accompanied, where appropriate, by the essence of the reasons; and

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(c) the appropriate remedies in accordance with national and Union law.

Article 6(1) shall not apply to this paragraph.

7. Where a residence permit is issued, or not withdrawn, because the competent authorities of the Kingdom of Spain have not objected to it pursuant to paragraphs 4 or 6 and despite an alert in the Schengen Information System for the purposes of refusing entry, or for the purposes of return, that residence permit does not give the holder the right to enter the territory of the Member States.

8. A residence permit in respect of Gibraltar shall comply with the uniform format laid down in Union law and shall bear clear indications that it is valid for Gibraltar.

9. The United Kingdom, in respect of Gibraltar, shall provide Spain with specimens of permits in respect of Gibraltar and any subsequent modification thereto for the purpose of the Kingdom of Spain notifying these to the Commission in line with the procedure in Article 39(1)(a) of the Schengen Borders Code.

10. The Kingdom of Spain shall designate, in accordance with Article 68, the authority responsible for receiving the information pursuant to this Article. The United Kingdom, in respect of Gibraltar, shall notify in accordance with Article 68 the authority responsible for receiving applications for residence permits, issuing or renewing residence permits in respect of Gibraltar and submitting information to the Kingdom of Spain pursuant to this Article.

11. Paragraphs 2 to 7 shall not apply to:

(a) Union citizens and family members of Union citizens, irrespective of their nationality, referred to in Articles 2 and 3 of Directive 2004/38/EC;

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(b) nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino and their family members, irrespective of their nationality, who under agreements concluded by the Union enjoy rights of free movement equivalent to those referred to in point (a).

12. In the case of persons and family members forming part of their household posted in service to United Kingdom forces or to the United Kingdom, in respect of Gibraltar, where the competent authorities of the Kingdom of Spain has objected to the issuance of the residence permit in accordance with paragraph 4, they shall be issued a residence permit with territorial validity limited to Gibraltar.

ARTICLE 52

Transitional rule for residence permits

1. Residence permits issued by the competent authorities of the United Kingdom, in respect of Gibraltar, prior to the date of entry into force of this Agreement shall remain valid for a period of two calendar years after that date or until their expiration date, whichever comes first.

2. The United Kingdom, in respect of Gibraltar, shall provide the Kingdom of Spain with specimens of such permits and any subsequent modification thereto for the purposes of the Kingdom of Spain notifying these to the Commission in accordance with Article 39(1) (a) of the Schengen Borders Code.

3. The competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of Spain of the holders of residence permits in force at the time of the entry into force of this Agreement. The competent authorities of the Kingdom of Spain may, on the basis of checks on such persons in the relevant Union, national and international databases, including the Schengen Information System request the competent authorities of the United Kingdom, in respect of Gibraltar, to withdraw a residence permit where the applicant is considered, in accordance with the Schengen *acquis*, to be a threat to public policy[1], internal security, public health or the international relations of any of the Member States. Upon receipt of such a request, the competent authorities of the United Kingdom, in respect of Gibraltar, shall withdraw the relevant residence permit subject to a right of appeal in before a national court.

Article 6(1) shall not apply to this paragraph.

4. Paragraph 3 shall not apply to:

(a) Union citizens and family members of Union citizens, irrespective of their nationality, referred to in Articles 2 and 3 of Directive 2004/38/EC;

(b) nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Swiss Confederation, the Principality of Andorra and the Republic of San Marino and their family members, irrespective of their nationality, who under agreements concluded by the Union enjoy rights of free movement equivalent to those referred to in point (a).

[1] Measures taken on the grounds of public policy shall be proportionate and shall be based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

CHAPTER 2

APPLICATIONS FOR INTERNATIONAL PROTECTION AND RETURN

PUBLIC

ARTICLE 53

Applications for international protection

1. Subject to paragraphs 6 to 10, where a person makes an application for international protection in Gibraltar, the competent authorities of the United Kingdom, in respect of Gibraltar, shall be responsible for the examination of that application.

2. Where an application for international protection is made pursuant to paragraph 1, the applicant shall be escorted by the competent authorities of the United Kingdom, in respect of Gibraltar, to the Second Line Checks Area for the purposes of registering the application, subject to paragraph 5. The competent authorities of the United Kingdom, in respect of Gibraltar, shall immediately inform the competent authorities of the Kingdom of Spain, subject to paragraph 5.

3. Without prejudice to paragraph 1, where a person is going through the border checks carried out pursuant to Article 29, they may make an application for international protection before the competent authorities of the United Kingdom, in respect of Gibraltar or before those of the Kingdom of Spain.

4. Where a person makes an application for international protection before or during the performance of border checks carried out pursuant to Article 29, the checks shall be completed.

In the event that border checks trigger the need for follow-up action to be taken as referred to in Article 34, such action shall be taken to the extent that it respects and does not undermine the right to international protection and the principle of non-refoulement.

Where an application for international protection is made pursuant to paragraph 3, the applicant shall be escorted by the competent authorities before which they made the application to the Second Line Checks Area for the purposes of registering the application, subject to paragraph 5.

Where a person makes an application for international protection before the competent authorities of the Kingdom of Spain, the Kingdom of Spain shall be responsible for the examination of that application in accordance with Union and domestic law.

Where a person makes an application for international protection before the competent authorities of the United Kingdom, in respect of Gibraltar, the United Kingdom, in respect of Gibraltar, shall be responsible for the examination of that application in accordance with domestic law, and subject to paragraphs 6 to 10.

5. For the purposes of examining individual applications and after a final decision on the application has been taken, the competent authorities shall not:

(a) disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm;

PUBLIC

(b) obtain any information from the alleged actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant or their dependants, or the liberty and security of their family members still living in the country of origin.

6. Where the United Kingdom, in respect of Gibraltar, is responsible for the examination of an application for international protection, the application shall be processed in accordance with standards that are at least equivalent to those applicable in the Union with respect to eligibility criteria for and content of international protection, as well as with respect to the procedures applicable to the examination of applications for international protection and reception conditions of applicants.

7. Where the competent authorities of the Kingdom of Spain are informed of an application for international protection in accordance with paragraph 2, they may inform the competent authorities of the United Kingdom, in respect of Gibraltar, within 14 calendar days of their objection to the granting of international protection by the United Kingdom, in respect of Gibraltar. In that case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall refrain from granting international protection until they have given full consideration to any information provided by the competent authorities of the Kingdom of Spain. The competent authorities of the United Kingdom, in respect of Gibraltar, shall notify the competent authorities of the Kingdom of Spain of the final decision and the reasons therefor, subject to paragraph 5.

PUBLIC

The competent authorities of the Kingdom of Spain shall notify the competent authorities of the United Kingdom, in respect of Gibraltar, if the period of 14 calendar days referred to in the first sentence is to be extended by a maximum of 14 calendar days. The absence of a response by the expiry of that 14 calendar days period shall be considered a positive response. In any case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall refrain from granting international protection before the end of the period provided in this paragraph.

8. Where the United Kingdom, in respect of Gibraltar, is responsible for the examination of an application for international protection, it shall take all necessary measures to ensure that an applicant, other than a Union citizen, is not permitted to enter, and is prevented from entering, the territory of the Member States for the duration of the procedure for international protection and until a final decision is taken on the application.

The competent authorities of the Kingdom of Spain shall as soon as possible and no later than 72 hours after the escorting of the person to the Second Line Checks Area, take and transmit the data of persons, other than Union citizens, who have made an application for international protection pursuant to paragraph 1 and transmit that data in EURODAC.

9. Where a person is granted international protection by the United Kingdom, in respect of Gibraltar, he or she shall be issued with a residence permit, which shall have territorial validity limited to Gibraltar.

PUBLIC

Where a final decision has been taken rejecting an application for international protection, the competent authorities of the United Kingdom, in respect of Gibraltar, shall take all necessary measures to ensure that the person concerned is removed from Gibraltar, in accordance with rules and safeguards that ensure standards equivalent to those laid down in Directive 2008/115/EC of the European Parliament and of the Council[1].

10. Where the United Kingdom, in respect of Gibraltar, is responsible for an application of international protection and where the applicant has irregularly travelled to a Member State or a State that has concluded an agreement with the Union on the criteria and mechanisms for establishing the State responsible for examining a request for asylum, the applicant shall be returned to Gibraltar.

PUBLIC

[1] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ EC L 348, 24.12.2008, p. 98, ELI: http://data.europa.eu/eli/dir/2008/115/oj).

CHAPTER 3

POLICE COOPERATION

PUBLIC

ARTICLE 54

Information exchange

1. The objective of this Article is to ensure that the competent authorities of the Member States and of the United Kingdom, in respect of Gibraltar, are able, subject to the conditions of their domestic law and within the scope of their powers, and to the extent that this is not provided for in this Chapter and in Chapter 4 of this Title, to assist each other through the provision of relevant information for the purposes of:

(a) prevention, investigation, detection or prosecution of criminal offences, including the fight against organised crime and illegal trafficking;

(b) execution of criminal penalties;

(c) safeguarding against, and prevention of, threats to public safety; and

(d) prevention and combating of money laundering and the financing of terrorism.

2. For the purposes of this Article, a "competent authority" means a domestic police, customs or other authority that is competent under domestic law to undertake activities for the purposes set out in paragraph 1.

3. Information, including on wanted and missing persons as well as objects, may be requested by a competent authority of the United Kingdom, in respect of Gibraltar, or of a Member State, or provided spontaneously to a competent authority of the United Kingdom, in respect of Gibraltar, or of a Member State. Information may be provided in response to a request or spontaneously, subject to the conditions of the domestic law which applies to the providing competent authority and within the scope of its powers.

4. Information may be requested and provided to the extent that the conditions of the domestic law which applies to the requesting or providing competent authority do not stipulate that the request or provision of information must be made or channelled via judicial authorities.

5. In urgent cases, the providing competent authority shall respond to a request, or provide information spontaneously, as soon as possible.

6. A requesting authority of any of the Parties may, in accordance with relevant domestic law, at the time of making the request or at a later point in time, seek consent from the providing authority of any of the Parties for the information to be used for evidential purposes in proceedings before a judicial authority. The providing authority may, subject to the conditions set out in the provisions referred to in Chapter 5 of Title V of this Part and in its domestic law, consent to the information being used for evidential purposes before a judicial authority in a Member State, where the requesting authority pertains to the latter, or in the United Kingdom, in respect of Gibraltar, where the requesting authority pertains to the latter. Equally, where information is provided spontaneously, the providing authority may consent to the information being used for evidential purposes in proceedings before a judicial authority in a Member State, where the information is provided to a competent authority of the latter, or in the United Kingdom, in respect of Gibraltar, where the information is provided to a competent authority of the latter. Where consent is not given under this paragraph, the information received shall not be used for evidential purposes in proceedings before a judicial authority.

PUBLIC

7. The providing authority may, under relevant domestic law, impose conditions on the use of the information provided.

8. A competent authority may provide under this Article any type of information which it holds, subject to the conditions of the domestic law which applies to it and within the scope of its powers. This may include information from other sources, only if onward transfer of that information is permitted in the framework under which it was obtained by the providing competent authority.

9. Information may be provided under this Article via any appropriate communication channel, including the secure communication line for the purpose of provision of information through Europol, subject to Article 73.

10. Without prejudice to paragraph 5, all formal communications and notifications under this Article shall be performed in line with Article 6(1). This does not include communications and decisions which relate to urgent operational or logistical matters.

ARTICLE 55

Continued surveillance

1. The competent authorities of the United Kingdom, in respect of Gibraltar, or of the Kingdom of Spain who, as part of a criminal investigation, are keeping under surveillance in the Kingdom of Spain or in Gibraltar, as the case may be, a person who is presumed to have participated in a criminal offence listed in Annex 8 or a person under surveillance who can assist in identifying or tracing such a person, may continue their surveillance, in line with the relevant Schengen *acquis*, in Gibraltar or Spain, respectively.

PUBLIC

2. Administrative arrangements between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall set out the practical modalities concerning the performance of the duties of the competent authorities and operational cooperation aspects relating to the continued surveillance referred to in paragraph 1.

PUBLIC

ARTICLE 56

Uninterrupted pursuit

1. Officers of the United Kingdom, in respect of Gibraltar, or of the Kingdom of Spain who are pursuing an individual caught in the act of committing or of participating in one of the offences listed in Annex 8 may continue pursuit, in line with the relevant Schengen *acquis*, in Gibraltar or Spain, respectively.

The same shall apply where the person being pursued has escaped from provisional custody or while serving a sentence involving deprivation of liberty.

2. Administrative arrangements between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall set out the practical modalities concerning the performance of the duties of the competent authorities and operational cooperation aspects relating to the pursuit referred to in paragraph 1.

ARTICLE 57

Communication

1. The United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall install and keep in place, communication lines and other direct links to facilitate police and customs cooperation between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain, in particular for the timely transmission of information for the purposes of continued surveillance and uninterrupted pursuit.

2. In addition, the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall consider further possibilities for enhancing direct communication between their police and customs services. The details of such arrangements shall be laid down bilaterally.

ARTICLE 58

Joint operations

1. In order to step up police cooperation, the competent authorities of the Union and the Member States, on the one side, and of the United Kingdom, in respect of Gibraltar, on the other side, may, in maintaining public order and security and preventing criminal offences, introduce joint patrols and other joint operations in which designated officers or other officials from either side participate in operations within the Member States or in Gibraltar, as the case may be.

PUBLIC

2. The Union in respect of its Member States and the United Kingdom, in respect of Gibraltar, shall submit declarations regarding competent authorities for the purpose of this Article and laying down the conditions for and practical aspects of the cooperation in line with Union law. Such conditions shall inter alia specify whether the designated officers or other officials referred to in paragraph 1 may exercise executive powers, the responsibility for actions committed by the seconding side's officers, as well as the applicable law.

3. Any joint operation, including where it takes the form of a joint patrol, that takes place within the territory of a Member State or within the territory of Gibraltar shall be explicitly authorised, prior to the joint operation, respectively by that Member State or the United Kingdom, in respect of Gibraltar, who shall also take part in it.

ARTICLE 59

Relevant databases

1. The Union shall ensure that the designated officers or other officials of the United Kingdom, in respect of Gibraltar, participating in joint operations as referred to in Article 58, may consult their own relevant domestic and international databases, as permitted under the law of the United Kingdom, in respect of Gibraltar, during a joint operation in a Member State.

2. The United Kingdom, in respect of Gibraltar, shall ensure that officers of Member States participating in joint operations as referred to in Article 58, may consult their own relevant national, Union and international databases, as permitted under their domestic law, during a joint operation in Gibraltar.

PUBLIC

ARTICLE 60

Protection and assistance during joint operation

The Member States participating in a joint operation and the United Kingdom, in respect of Gibraltar, shall be required to provide each other's officers participating that joint operation within their territory in accordance with Article 58 with the same protection and assistance in the course of those officers' duties as for their own officers.

ARTICLE 61

Passenger Name Record data

The United Kingdom, in respect of Gibraltar, shall ensure that carriers transfer Passenger Name Record (PNR) data concerning flights arriving in Gibraltar to the competent authorities of the Kingdom of Spain. Such transfers shall comply with the requirements of Directive (EU) 2016/681 of the European Parliament and of the Council[1].

Article 19 shall apply.

[1] Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ EU L 119, 4.5.2016, p. 132, ELI: http://data.europa.eu/eli/dir/2016/681/oj).

ARTICLE 62

Enhanced police checks

1. Where necessary, on the basis of a risk assessment, in order to prevent criminal offences and irregular migration, the competent authorities of the United Kingdom, in respect of Gibraltar, and of the Kingdom of Spain shall perform enhanced police checks in Gibraltar and in the contiguous frontier zone, respectively.

2. Enhanced police checks as referred to in paragraph 1 may take the form of joint operations in accordance with Article 58.

ARTICLE 63

Applicable provisions of Union law

The provisions of Union law listed in Annex 9 to this Agreement shall apply to the United Kingdom, in respect of Gibraltar, and in Gibraltar.

Article 19 applies.

PUBLIC

TITLE IV

IMPLEMENTATION, APPLICATION, EVALUATION AND ENFORCEMENT

PUBLIC

ARTICLE 64

Schengen evaluations

The United Kingdom, in respect of Gibraltar, shall admit Union and Member State representatives and experts designated by Union agencies conducting evaluations of the application of the Schengen *acquis* by Spain pursuant to this Part. The United Kingdom, in respect of Gibraltar, shall assist and facilitate such representatives to exercise their tasks, as set out in Council Regulation (EU) 2022/922[1] including, but not limited, to visiting and inspecting infrastructure located in Gibraltar.

The Kingdom of Spain shall, as soon as it receives a notification for such visits pursuant to Article 19(3) and (4) of Council Regulation (EU) 2022/922, inform the United Kingdom, in respect of Gibraltar.

[1] Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, and repealing Regulation (EU) No 1053/2013 (OJ EU L 160, 15.6.2022, p. 1, ELI: http://data.europa.eu/eli/reg/2022/922/oj).

ARTICLE 65

Evaluation of the implementation

The Specialised Committee on the Circulation of Persons shall complete an evaluation of the implementation of this Part, including the administrative arrangements referred to in Article 33(5) at the latest 4 years after this Part of the Agreement coming into effect. By that time, the Specialised Committee on the Circulation of Persons shall, following consultations, address a report on the evaluation to the Cooperation Council which shall include an assessment of the administrative arrangements set out in Article 33(5). That report shall set out the common assessment of the representatives of the Parties or, in the alternative, the assessment of the representatives of each Party.

ARTICLE 66

Termination of the agreement after the evaluation of the implementation

1. Following completion of the evaluation referred to in Article 65 and without prejudice to Article 334, the Union, including at the request of the Kingdom of Spain, and the United Kingdom may terminate this Agreement by written notification through diplomatic channels. This Agreement and any supplementing agreement shall cease to be in force on the first day of the twelfth month following the date of notification.

2. Where the Kingdom of Spain has requested the Union to terminate this Agreement, in accordance with paragraph 1, the Union will proceed to such termination.

PUBLIC

ARTICLE 67

Suspension of obligations

1. Notwithstanding Article 334, and with full respect of the exercise of the responsibilities incumbent upon the Parties with regard to law and order, the safeguarding of internal security and the management of their section of the external borders, in case of serious non-respect of commitments under this Part, or where either Party considers that it is exposed to a serious and persistent threat to internal security due to the absence of controls between the Union and Gibraltar, either Party, after consultations with each other, may temporarily suspend the implementation of its obligations under Titles I to V of this Part. The Union will take the opinion of the Kingdom of Spain duly into account.

2. Where either Party intends to suspend its obligations in accordance with paragraph 1, it shall without delay notify the other, through the Cooperation Council. Such notification shall indicate the period for which the Party intends the temporary suspension of its obligations to apply. The temporary suspension of the Party's obligations shall take effect on the eighth day of the notification or on any later date as specified therein. On this basis, the Member States and the United Kingdom, in respect of Gibraltar, shall reinstate border control between the Union and Gibraltar.

ARTICLE 68

Notifications, declarations, reservations and designations

1. By the date of the entry into force of this Agreement, the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall make the notifications and designations provided for in Articles 50(9) and 51(10).

PUBLIC

2. By that same date, the Union in respect of the Member States, and the United Kingdom, in respect of Gibraltar, shall make declarations referred to in Article 58(2).

3. By the date of the entry into force of this Agreement, the Union and the United Kingdom, in respect of Gibraltar, shall make any of the notifications provided for in Article 121(2), Article 122(2) and Article 130(4).

4. To the extent that such notification has not been made, at the point in time referred to in the first paragraph, notifications may be made as soon as possible and at the latest two months after the entry into force of this Agreement.

During that interim period, any Member State or the United Kingdom, in respect of Gibraltar, in relation to which no notification provided for in Articles 121(2), 122(2) and 130(4) has been made, and which has not been the subject of an indication that no such notification is to be made, may avail itself of the possibilities provided for in that Article as if such a notification had been made in respect of that Member State or the United Kingdom, in respect of Gibraltar. In the case of Article 122(2), a Member State or the United Kingdom, in respect of Gibraltar, may only avail itself of the possibilities provided for in that Article to the extent that to do so is compatible with the criteria for making a notification.

5. The notifications provided for in the following provisions may be made at any time:

(a) Article 118(4);

(b) Article 124(1);

PUBLIC

(c) Article 125(2);

(d) Article 144(1);

(e) Article 145(1);

(f) Article 165(4);

(g) Article 166(5);

(h) Article 167(5);

(i) Article 176(2); and

(j) Article 184(3) and (7).

6. The notifications and declarations provided for in the following provisions may be modified at any time:

(a) Article 58(2);

(b) Article 124(1);

(c) Article 125(2); and

(d) Article 184(3) and (7).

PUBLIC

7. The notifications provided for in the following provisions may be withdrawn at any time:

(a) Article 121(2);

(b) Article 122(2);

(c) Article 124(1);

(d) Article 130(4);

(e) Article 165(4);

(f) Article 166(5); and

(g) Article 167(5).

8. By the date of entry into force of this Agreement, the United Kingdom, in respect of Gibraltar shall notify the Union of the identity of the following authorities:

(a) the authority considered as the competent authority for the purposes of Chapter 1 of Title V of this Part as referred to in point (b) of Article 74 and a short description of its competences;

(b) the authority considered as the competent authority for the purposes of Chapter 2 of Title V of this Part, as referred to in Point (b) of Article 90, and a short description of its competences;

(c) the authority competent by virtue of the domestic law of the United Kingdom, in respect of Gibraltar, to execute an arrest warrant as referred to in point (c) of Article 117;

PUBLIC

(d) the authority competent by virtue of the domestic law of the United Kingdom, in respect of Gibraltar, to issue an arrest warrant as referred to in point (d) of Article 117;

(e) the authority under Article 142; and

(f) the authority notified under Article 182.

9. By the date of entry into force of this Agreement, the Union shall, on its behalf or on behalf of its Member States, as the case may be, notify the United Kingdom, of the identity of the following authorities:

(a) the authority competent by virtue of the domestic law of each Member State to execute an arrest warrant as referred to in point (c) of Article 117;

(b) the authority competent by virtue of the domestic law of each Member State to issue an arrest warrant as referred to in point (d) of Article 117;

(c) the authority for each Member State under Article 142;

(d) the Union body referred to in Article 153;

(e) the central authority for each Member State under Article 182(1); and

(f) any Union body notified under the first sentence of Article 182(3) and whether it is also designated as a central authority under the last sentence of that paragraph.

PUBLIC

10. Where the Union makes a notification or declaration referred to in this Article, it shall indicate to which of its Member States the notification or declaration applies or whether it is making the notification or declaration on its own behalf.

11. The Union, Spain and the United Kingdom, in respect of Gibraltar, may notify more than one authority with respect to paragraphs 2, 7 and 8, as the case may be, and may limit such notifications for particular purposes only.

12. The notifications referred to in paragraphs 7 and 8 may be modified at any time.

13. All notifications, declarations, reservations and designations referred to in this Article shall be made through the mechanism established in accordance with Article 19.

ARTICLE 69

Security exception

Nothing in Titles I to IV of this Part shall prevent the Parties or the Member States from taking measures necessary to safeguard their national security.

PUBLIC

TITLE V

LAW ENFORCEMENT AND JUDICIAL COOPERATION

PUBLIC

ARTICLE 70

Objective

1. The objective of this Title is to provide for law enforcement and judicial cooperation between the Member States and Union institutions, bodies, offices and agencies, on the one side, and the United Kingdom, in respect of Gibraltar, on the other side, in relation to the prevention, investigation, detection and prosecution of criminal offences and the prevention of and fight against money laundering and financing of terrorism.

2. This Title only applies to law enforcement and judicial cooperation in criminal matters taking place exclusively between the Union and the Member States, on the one side, and the United Kingdom, in respect of Gibraltar, on the other side. It does not apply to situations arising between the Member States, or between Member States and Union institutions, bodies, offices and agencies, nor does it apply to the activities of authorities with responsibilities for safeguarding national security when acting in that field.

ARTICLE 71

Scope of cooperation where a Member State no longer participates in analogous measures under Union law

1. This Article applies if a Member State ceases to participate in, or enjoy rights under, provisions of Union law relating to law enforcement and judicial cooperation in criminal matters analogous to any of the relevant provisions of this Title.

2. The United Kingdom, in respect of Gibraltar, may notify the Union in writing of its intention to cease to operate the relevant provisions of this Part in relation to that Member State.

3. A notification given under paragraph 2 takes effect on the date specified therein, which shall be no earlier than the date on which the Member State ceases to participate in, or to enjoy rights under, the provisions of Union law referred to in paragraph 1.

PUBLIC

CHAPTER 1

COOPERATION WITH EUROPOL

PUBLIC

ARTICLE 72

Objective

The objective of this Chapter is to establish cooperative relations between Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, in order to support and strengthen the action by the Member States and the United Kingdom, in respect of Gibraltar, 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, as referred to in Article 75.

ARTICLE 73

Communication

All communications and notifications referred to in this Chapter shall be performed through the national contact point as set out in Article 77(1) or liaison officers as set out in Articles 77(4) of the United Kingdom to Europol except where Article 77(2) applies.

ARTICLE 74

Definitions

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

(a) "competent authority" means, for the Union, Europol and, for the United Kingdom, in respect of Gibraltar, a domestic law enforcement authority, responsible under domestic law for preventing and combating criminal offences in Gibraltar;

(b) "Europol" means the European Union Agency for Law Enforcement Cooperation, set up under Regulation (EU) 2016/794 of the European Parliament and of the Council[1] (the "Europol Regulation").

ARTICLE 75

Forms of crime

1. The cooperation established under this Chapter relates to the forms of crime within Europol's competence, as listed in Annex 10, including related criminal offences.

[1] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ EU L 135, 24.5.2016, p. 53, ELI: http://data.europa.eu/eli/reg/2016/794/oj).

2. Related criminal offences are criminal offences committed in order to procure the means of committing the forms of crime referred to in paragraph 1, criminal offences committed in order to facilitate or carry out such crimes, and criminal offences committed to ensure impunity for such crimes.

3. Where the list of forms of crime for which Europol is competent under Union law is changed, the Specialised Committee on Circulation of Persons may, upon a proposal from the Union, amend Annex 10 accordingly from the date when the change to Europol's competence enters into effect.

PUBLIC

ARTICLE 76

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 defined in the Europol Regulation, in particular include:

(a) the exchange of information such as specialist knowledge;

(b) general situation reports;

(c) results of strategic analysis;

(d) information on criminal investigation procedures;

(e) information on crime prevention methods;

(f) participation in training activities; and

(g) the provision of advice and support in individual criminal investigations as well as operational cooperation.

PUBLIC

ARTICLE 77

National contact point and liaison officers

1. The national contact point of the United Kingdom to Europol, designated pursuant to Article 568(1) of the Trade and Cooperation Agreement, shall act as the central point of contact between Europol and the competent authorities of the United Kingdom, in respect of Gibraltar.

2. The exchange of information and notifications between Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, shall, except where direct exchange of information is necessary in urgent cases and is considered appropriate by both Europol and the relevant competent authority of the United Kingdom, in respect of Gibraltar, take place between Europol and the national contact point referred to in paragraph 1.

3. The national contact point referred to in paragraph 1 shall also be the central point of contact in respect of review, correction and deletion of personal data.

4. Liaison officers seconded by the United Kingdom to Europol, pursuant to Article 568(4) of the Trade and Cooperation Agreement, may also facilitate the cooperation established under this Chapter with regard to the United Kingdom, in respect of Gibraltar. A liaison officer seconded by Europol to the United Kingdom may also facilitate the cooperation with regard to the United Kingdom, in respect of Gibraltar.

5. The United Kingdom shall ensure that the liaison officers referred to in paragraph 4 have speedy access to the relevant domestic databases of the United Kingdom, in respect of Gibraltar, that are necessary for them to fulfil their tasks.

6. The details of the tasks of the liaison officers responsible for Gibraltar, as referred to in paragraph 4, their rights and obligations and the costs involved shall be governed by working arrangements concluded between Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, as referred to in Article 86.

7. The liaison officers responsible for Gibraltar, as referred to in paragraph 4, and representatives of the competent authorities of the United Kingdom, in respect of Gibraltar, may be invited to operational meetings. Member State liaison officers and third-country liaison officers, representatives of competent authorities from the Member States and third countries, Europol staff and other stakeholders may attend meetings organised by the liaison officers responsible for Gibraltar, as referred to in paragraph 4, or the competent authorities of the United Kingdom, in respect of Gibraltar.

PUBLIC

ARTICLE 78

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 shall be specified in line with the specific purposes of processing set out in the Europol Regulation. If the transferring competent authority has not done so, the receiving competent authority, in agreement with the transferring authority, shall process the personal data in order to determine their relevance as well as the purpose or purposes for which it is to be further processed. The competent authorities may process personal data for a purpose other than the purpose for which they have been provided only if authorised to do so by the transferring competent authority.

3. The competent authorities receiving the personal data shall give an undertaking 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.

4. Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, shall determine without undue delay, and in any event no later than six months after receipt of the personal data, if and to what extent those personal data are necessary for the purpose for which they were transferred and inform the transferring authority accordingly.

PUBLIC

ARTICLE 79

Restrictions on access to and further use of transferred personal data

1. The transferring competent authority may indicate, when transferring personal data, any restriction on access thereto or the use to be made thereof, in general or specific terms, including as regards their onward transfer, erasure or destruction after a certain period of time, or its further processing. 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 information transferred under this Chapter was collected, stored and transferred in accordance with its respective legal framework. Each Party shall ensure, as far as possible, that such information has not been obtained in violation of human rights. Nor shall such information be transferred if, to the extent reasonably foreseeable, it could be used to request, hand down or execute a death penalty or any form of cruel or inhuman treatment.

PUBLIC

ARTICLE 80

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 United Kingdom, in respect of Gibraltar, and Europol shall each 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 81

Facilitation of flow of personal data between the United Kingdom, in respect of Gibraltar, and Europol

In the interest of mutual operational benefits, the Parties shall endeavour to cooperate in the future with a view to ensuring that data exchanges between Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, can take place as quickly as possible, and to consider the incorporation of any new processes and technical developments which might assist with that objective, while taking account of the fact that the United Kingdom is not a Member State and in full respect of the notifications and communications regime established under Article 73.

PUBLIC

ARTICLE 82

Assessment of reliability of the source and accuracy of information

1. The competent authorities shall indicate as far as possible, at the latest when transferring the information, the reliability of the source of the information on the basis of the following criteria:

(a) where there is no doubt as to the authenticity, trustworthiness and competence of the source, or if the information is provided by a source which has proved to be reliable in all instances;

(b) where the information is provided by a source which has in most instances proved to be reliable;

(c) where the information is provided by a source which has in most instances proved to be unreliable;

(d) where the reliability of the information cannot be assessed.

2. The competent authorities shall indicate as far as possible, at the latest when 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;

PUBLIC

(c) information not known personally to the source but corroborated by other information already recorded;

(d) information not known personally to the source and which 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 provided for in point (d) of paragraph 1 and point (d) of paragraph 2.

ARTICLE 83

Security of the information exchange

1. The technical and organisational measures put in place to ensure the security of the information exchange under this Chapter shall be laid down in administrative arrangements as referred to in Article 86.

PUBLIC

2. The Parties agree on the establishment, implementation and operation of secure communication lines for the purpose of the exchange of information under this Chapter.

3. Administrative arrangements as referred to in Article 85 shall regulate the secure communication lines terms and conditions of use.

PUBLIC

ARTICLE 84

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, in respect of Gibraltar, may plead that the other competent authority had transferred inaccurate information.

2. If damages are awarded either against Europol or against the competent authorities of the United Kingdom, in respect of Gibraltar, because of the use by either of them of information which was erroneously communicated by the other, or communicated as a result of a failure on the part of the other to comply with their obligations, the amount paid as compensation under paragraph 1 either by Europol or by the competent authorities of the United Kingdom, in respect of Gibraltar, shall be repaid by the other, unless the information was used in breach of this Chapter.

3. Europol and the competent authorities of the United Kingdom, in respect of Gibraltar, shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2.

ARTICLE 85

Exchange of classified and sensitive non-classified information

The exchange and protection of classified and sensitive non-classified information, if necessary under this Chapter, shall be regulated in working and administrative arrangements as referred to in Article 86.

PUBLIC

ARTICLE 86

Working and administrative arrangements

1. The details of cooperation between the United Kingdom, in respect of Gibraltar, and Europol, as appropriate to complement and implement the provisions of this Chapter, shall be the subject of working arrangements in accordance with Article 23(4) of the Europol Regulation and administrative arrangements in accordance with Article 25(1) of the Europol Regulation concluded between Europol and the competent authorities of the United Kingdom.

2. In lieu of concluding working and administrative arrangements pursuant to paragraph 1, the competent authorities of the United Kingdom and Europol may agree that any existing working or administrative arrangement concluded between the competent authorities of the United Kingdom and Europol pursuant to Article 577 of the Trade and Cooperation Agreement shall also apply in respect of Gibraltar.

3. The substance of working and administrative arrangements may be set out together in one document.

ARTICLE 87

Notification of implementation

1. The United Kingdom, in respect of Gibraltar, and Europol shall each 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, and shall each ensure that a copy of that document be provided to the other.

2. Where not already in place, the United Kingdom, in respect of Gibraltar, and Europol shall adopt practical arrangements specifying how compliance with the provisions regarding the processing of personal data will be enforced in practice. The United Kingdom, in respect of Gibraltar, and Europol shall each send a copy of those practical arrangements to the other and to the respective supervisory authorities.

ARTICLE 88

Powers of Europol

Nothing in this Chapter shall be construed as creating an obligation on Europol to cooperate with the competent authorities of the United Kingdom, in respect of Gibraltar, beyond Europol's competence as set out in the relevant Union law.

PUBLIC

CHAPTER 2

COOPERATION WITH EUROJUST

PUBLIC

ARTICLE 89

Objective

The objective of this Chapter is to establish cooperation between Eurojust and the competent authorities of the United Kingdom, in respect of Gibraltar, in combating serious crimes as referred to in Annex 11.

ARTICLE 90

Definitions

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

(a) "Assistant" means a person who may assist a National Member and the National Member's Deputy, or the Liaison Prosecutor, as referred to in the Eurojust Regulation and in Article 95(3) respectively;

(b) "College" means the College of Eurojust, as referred to in the Eurojust Regulation;

(c) "competent authority" means, for the Union, Eurojust, represented by the College or a National Member and, for the United Kingdom, in respect of Gibraltar, a domestic authority with responsibilities under domestic law relating to the investigation and prosecution of criminal offences in Gibraltar;

(d) "Domestic Correspondent for Terrorism Matters" means the contact point designated by the United Kingdom in accordance with Article 94, responsible for handling correspondence related to terrorism matters;

(e) "Eurojust" means the European Union Agency for Criminal Justice Cooperation, set up under Regulation (EU) 2018/1727 of the European Parliament and of the Council[1] (the "Eurojust Regulation");

(f) "Liaison Magistrate" means the magistrate posted by Eurojust to the United Kingdom in accordance with Article 96;

(g) "Liaison Prosecutor" means the public prosecutor seconded by the United Kingdom to Eurojust and subject to the domestic law of the United Kingdom as regards the public prosecutor's status, in accordance with Article 95(3);

(h) "National Member" means the National Member seconded to Eurojust by each Member State, as referred to in the Eurojust Regulation.

[1] Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ EU L 295, 21.11.2018, p. 138, ELI: http://data.europa.eu/eli/reg/2018/1727/oj).

ARTICLE 91

Communication

All communications and notifications referred to under this Chapter shall be performed through the national contact points as set out in Article 94 and the liaison prosecutors as set out in Article 95.

PUBLIC

ARTICLE 92

Forms of crime

1. The cooperation established under this Chapter relates to the forms of serious crime within the competence of Eurojust, as listed in Annex 11, including related criminal offences.

2. Related criminal offences are the criminal offences committed in order to procure the means of committing forms of serious crime referred to in paragraph 1, criminal offences committed in order to facilitate or commit such serious crimes, and criminal offences committed to ensure impunity for such serious crimes.

3. Where the list of forms of serious crime for which Eurojust is competent under Union law is changed, the Specialised Committee on Circulation of Persons may, upon a proposal from the Union, amend Annex 11 accordingly from the date when the change to Eurojust's competence enters into effect.

ARTICLE 93

Scope of cooperation

The Parties shall ensure that Eurojust and the competent authorities of the United Kingdom, in respect of Gibraltar, cooperate in the fields of activity set out in Articles 2 and 54 of the Eurojust Regulation and in this Chapter.

PUBLIC

ARTICLE 94

Contact points to Eurojust

The contact point(s) to Eurojust, appointed or put in place by the United Kingdom pursuant to Article 584 of the Trade and Cooperation Agreement, including the contact points designated as the United Kingdom Domestic Correspondent for Terrorism Matters, shall also serve as contact point(s) to Eurojust for the United Kingdom, in respect of Gibraltar.

ARTICLE 95

Liaison Prosecutor

1. The Liaison Prosecutor and Liaison Prosecutor's Assistants of the United Kingdom to Eurojust, seconded pursuant to Article 585(1) and (3) of the Trade and Cooperation Agreement, shall facilitate the cooperation established under this Chapter, in respect of Gibraltar, within the scope of their competence. When necessary, Assistants may replace the Liaison Prosecutor or act on the Liaison Prosecutor's behalf.

2. The details of the tasks of the Liaison Prosecutor and of the Liaison Prosecutor's Assistants referred to in paragraph 1, their rights and obligations and the costs involved shall be governed by a working arrangement, as referred to in Article 104.

3. The United Kingdom shall inform Eurojust of the nature and extent of the role of the Liaison Prosecutor and the Liaison Prosecutor's Assistants, referred to in paragraph 1, in order to accomplish their tasks of facilitating cooperation in accordance with this Chapter.

4. The Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in paragraph 1 shall have access to the information contained in the domestic criminal record, or in any other register of the competent authorities of the United Kingdom, in respect of Gibraltar, in accordance with domestic law in the case of a prosecutor or person of equivalent competence.

5. The Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in paragraph 1 shall have the power to contact the competent authorities of the United Kingdom, in respect of Gibraltar, directly.

6. The working documents of the Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in paragraph 1 shall be held inviolable by Eurojust.

PUBLIC

ARTICLE 96

Liaison Magistrate

1. The Liaison Magistrate of Eurojust posted to the United Kingdom, pursuant to Article 586(1) of the Trade and Cooperation Agreement, may facilitate judicial cooperation in respect of Gibraltar, in cases in which Eurojust provides assistance, in accordance with Article 53 of the Eurojust Regulation.

2. The details of the Liaison Magistrate's tasks referred to in paragraph 1, the Liaison Magistrate's rights and obligations and the costs involved, shall be governed by a working arrangement as referred to in Article 104.

ARTICLE 97

Operational and strategic meetings

1. The Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in Article 95(1) and the contact point to Eurojust referred to in Article 94 may participate in meetings with regard to strategic matters at the invitation of the President of Eurojust and in meetings with regard to operational matters with the approval of the National Members concerned.

2. National Members, their Deputies and Assistants, the Administrative Director of Eurojust and Eurojust staff may attend meetings organised by the Liaison Prosecutor and the Liaison Prosecutor's Assistants referred to in Article 95(1) and the contact point to Eurojust referred to in Article 94.

PUBLIC

ARTICLE 98

Exchange of non-personal data

Eurojust and the competent authorities of the United Kingdom, in respect of Gibraltar, may exchange any non-personal data in so far as those data are relevant for the cooperation under this Chapter, and subject to any restrictions pursuant to Article 103.

PUBLIC

ARTICLE 99

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 89, for 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 when transferring personal data, the specific purpose or purposes for which the data are being transferred.

3. The transferring competent authority may indicate, when 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 its further processing. Where the need for such restrictions becomes apparent after the personal data have 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 provided for in paragraph 3.

PUBLIC

ARTICLE 100

Channels of transmission

1. Information shall be exchanged, subject to paragraph 3, between the Liaison Prosecutor or the Liaison Prosecutor's Assistants referred to in Article 95(1) or, if none is appointed or otherwise available, the United Kingdom's contact point to Eurojust referred to in Article 94 and the National Members concerned or the College.

2. Eurojust and the competent authorities of the United Kingdom, in respect of Gibraltar, shall each ensure that their respective representatives are authorised to exchange information at the appropriate level and in accordance with their respective legal frameworks, and are adequately screened.

3. Information may be exchanged, where necessary in urgent cases, if Eurojust has posted a Liaison Magistrate to the United Kingdom, and where considered appropriate by both the Liaison Magistrate and the relevant competent authority, between the Liaison Magistrate and any competent authority of the United Kingdom in respect of Gibraltar; in that event, the Liaison Prosecutor as set out in Article 95(1) or the Liaison Prosecutor's Assistants shall be informed of any such information exchange.

ARTICLE 101

Onward transfers

The competent authorities of the United Kingdom, in respect of Gibraltar, and Eurojust shall not communicate any information provided by the other to any third country or international organisation without the consent of whichever of the competent authorities of the United Kingdom, in respect of Gibraltar, or Eurojust provided the information and without appropriate safeguards regarding the protection of personal data.

PUBLIC

ARTICLE 102

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 Eurojust nor the competent authorities of the United Kingdom, in respect of Gibraltar, may plead that the other competent authority had transferred inaccurate information.

2. If damages are awarded against any competent authority because of its use of information which was erroneously communicated by the other, or communicated as a result of a failure on the part of the other to comply with their obligations, the amount paid as compensation under paragraph 1 by the competent authority shall be repaid by the other, unless the information was used in breach of this Chapter.

3. Eurojust and the competent authorities of the United Kingdom, in respect of Gibraltar, shall not require each other to pay for punitive or non-compensatory damages under paragraphs 1 and 2.

PUBLIC

ARTICLE 103

Exchange of classified and sensitive non-classified information

The exchange and protection of classified and sensitive non-classified information, if necessary under this Chapter, shall be regulated by a working arrangement as referred to in Article 104.

ARTICLE 104

Working arrangement

1. The modalities of cooperation between the United Kingdom, in respect of Gibraltar, and Eurojust, as appropriate to implement the provisions of this Chapter shall be the subject of a working arrangement concluded between Eurojust and the competent authorities of the United Kingdom in accordance with Articles 47(3) and 56(3) of the Eurojust Regulation.

2. In lieu of concluding working arrangements pursuant to paragraph 1, the competent authorities of the United Kingdom and Eurojust may agree that any existing working arrangement between the competent authorities of the United Kingdom and Eurojust pursuant to Article 594 of the Trade and Cooperation Agreement shall also apply in respect of Gibraltar.

ARTICLE 105

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, in respect of Gibraltar, beyond Eurojust's competences as set out in the relevant Union law.

PUBLIC

CHAPTER 3

EXCHANGE OF CRIMINAL RECORD INFORMATION

ARTICLE 106

Objective

1. The objective of this Chapter is to enable the exchange between the Members States, on the one side, and the United Kingdom, in respect of Gibraltar, on the other side, of information extracted from the criminal record.

2. In the relations between the United Kingdom, in respect of Gibraltar, and the Member States, the provisions of this Chapter supplement the provisions of Chapter 5 of Title V of this Part with regard to the exchange of criminal record information.

ARTICLE 107

Definitions

For the purposes of this Chapter, the following definitions 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 record of the convicting Member State or the United Kingdom, in respect of Gibraltar;

(b) "criminal proceedings" means the pre-trial stage, the trial stage and the execution of a conviction;

(c) "criminal record" means the domestic register or registers recording convictions in accordance with domestic law.

ARTICLE 108

Central authorities

The central authorities of the United Kingdom, in respect of Gibraltar, and of the Member States competent for the exchange of information extracted from the criminal record pursuant to this Chapter and for the exchanges referred to in Article 22(2) of the European Convention on Mutual Assistance in Criminal Matters with regard to the United Kingdom, in respect of Gibraltar, shall mean those designated and notified by the United Kingdom and the Member States, pursuant to Article 645 of the Trade and Cooperation Agreement, for the exchange of information extracted from the criminal record between the United Kingdom and the Member States.

PUBLIC

ARTICLE 109

Notifications

1. Each Member State and the United Kingdom, in respect of Gibraltar, shall take the necessary measures to ensure that all convictions handed down by its criminal courts are accompanied, when provided to its criminal record, by information on the nationality or nationalities of the convicted person.

2. The central authority of each Member State shall inform the central authority of the United Kingdom, in respect of Gibraltar, of all criminal convictions handed down by its criminal courts in respect of nationals of the United Kingdom holding a valid identity card or residence permit issued in Gibraltar by the competent authorities of the United Kingdom, in respect of Gibraltar, as well as of any subsequent alterations or deletions of information contained in the criminal record, as entered in the criminal record. The central authority of the United Kingdom, in respect of Gibraltar, shall inform the central authority of any Member State of all criminal convictions handed down by its criminal courts in respect of nationals of that Member State, as well as of any subsequent alterations or deletions of information contained in the criminal record, as entered in the criminal record. The central authorities of the Member States and of the United Kingdom, in respect of Gibraltar, shall communicate such information to each other at least once per month.

PUBLIC

3. If the central authority of a Member State or of the United Kingdom, in respect of Gibraltar, becomes aware of the fact that a convicted person is a national of two or more Member States or a national of one or more Member States and nationals of the United Kingdom holding a valid identity card or residence permit issued in Gibraltar, it shall transmit the relevant information to each of them, even if the convicted person is a national of the Member State within whose territory that person was convicted or a national of the United Kingdom holding a valid identity card or residence permit issued in Gibraltar, who was convicted in Gibraltar.

PUBLIC

ARTICLE 110

Storage of convictions

1. The central authority of each Member State and of the United Kingdom, in respect of Gibraltar, shall store all information notified under Article 109.

2. The central authority of each Member State and of the United Kingdom, in respect of Gibraltar, shall ensure that if a subsequent alteration or deletion is notified under Article 109, an identical alteration or deletion is made to the information stored in accordance with paragraph 1.

3. The central authority of each Member State and of the United Kingdom, in respect of Gibraltar, shall ensure that only information which has been updated in accordance with paragraph 2 of this Article is provided when replying to requests made under Article 111.

ARTICLE 111

Requests for information

1. If information from the criminal record of a Member State or of the United Kingdom, in respect of Gibraltar, 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 Member State or of the United Kingdom, in respect of Gibraltar, as the case may be, may, in accordance with its domestic law, submit to the central authority of another Member State or of the United Kingdom, in respect of Gibraltar, as the case may be, a request for information and related data to be extracted from the criminal record.

2. If a person addresses a request for information on their own criminal record to the central authority of a Member State or of the United Kingdom, in respect of Gibraltar, of which they are not a national, that central authority shall submit to the central authority of the Member State of the person's nationality or of the United Kingdom, in respect of Gibraltar, if the person is a national of the United Kingdom, a request for information and related data to be extracted from the criminal record in order to be able to include that information and related data in the extract to be provided to the person concerned.

PUBLIC

ARTICLE 112

Replies to requests

1. Replies to requests for information shall be transmitted by the requested central authority of a Member State and of the United Kingdom, in respect of Gibraltar, to the requesting central authority of a Member State or of the United Kingdom, in respect of Gibraltar, as soon as possible and in any event within 20 working days from the date the request was received.

2. The central authority of each Member State and of the United Kingdom, in respect of Gibraltar, shall reply to requests made for purposes other than that of criminal proceedings in accordance with its domestic law.

3. Notwithstanding paragraph 2, when replying to requests made for the purposes of recruitment for professional or organised voluntary activities involving direct and regular contacts with children, the Member State and the United Kingdom, in respect of Gibraltar, shall include information on the existence of criminal convictions for offences related to sexual abuse or sexual exploitation of children, child pornography, solicitation of children for sexual purposes, including inciting, aiding and abetting or attempting to commit any of those offences, as well as information on the existence of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions.

PUBLIC

ARTICLE 113

Channel of communication

The exchange between Member States and the United Kingdom, in respect of Gibraltar, of information extracted from the criminal record shall take place electronically in accordance with the technical and procedural specifications laid down in Annex 12.

PUBLIC

ARTICLE 114

Conditions for the use of personal data

1. Each Member State and the United Kingdom, in respect of Gibraltar, may use personal data received in reply to its request under Article 112 only for the purposes for which they were requested.

2. If the information was requested for any purposes other than that of criminal proceedings, personal data received under Article 112 may be used by a Member State or the United Kingdom, in respect of Gibraltar, in accordance with its domestic law only within the limits specified by the requested central authority in the form set out in Chapter 2 of Annex 12.

3. Notwithstanding paragraphs 1 and 2, personal data provided by a requested central authority in reply to a request under Article 112 may be used by the Member State or the United Kingdom, in respect of Gibraltar, by which the request was made to prevent an immediate and serious threat to public security.

4. Each Member State and the United Kingdom, in respect of Gibraltar, shall ensure that their central authorities do not disclose personal data notified under Article 109 to authorities in third countries unless the following conditions are met:

(a) the personal data are disclosed only on a case-by-case basis;

(b) the personal data are disclosed to authorities whose functions are directly related to the purposes for which the personal data are disclosed under point (c) of this paragraph;

(c) the personal data are disclosed only if necessary:

(i) for the purposes of criminal proceedings;

(ii) or any purposes other than that of criminal proceedings; or

(iii) to prevent an immediate and serious threat to public security;

(d) the personal data may be used by the requesting third country only for the purposes for which the information was requested and within the limits specified by the Member State or the United Kingdom, in respect of Gibraltar, as the case may be, that notified the personal data under Article 109; and

(e) the personal data are disclosed only if the central authority, having assessed all the circumstances surrounding the transfer of the personal data to the third country, concludes that appropriate safeguards exist to protect the personal data.

PUBLIC

5. This Article does not apply to personal data obtained by a Member State or the United Kingdom, in respect of Gibraltar, as the case may be, under this Chapter and originating from that Member State or the United Kingdom, in respect of Gibraltar, as the case may be.

PUBLIC

CHAPTER 4

SURRENDER

ARTICLE 115

Objective

The objective of this Chapter is to ensure that the extradition system between the Member States, on the one side, and the United Kingdom, in respect of Gibraltar, on the other side, is based on a mechanism of surrender pursuant to an arrest warrant in accordance with the terms of this Chapter.

ARTICLE 116

Principle of proportionality

Cooperation through the arrest warrant shall be necessary and proportionate, taking into account the rights of the requested person and the interests of the victims, and having regard to the seriousness of the act, the likely penalty that would be imposed and the possibility of the Member State or the United Kingdom, in respect of Gibraltar, taking measures less coercive than the surrender of the requested person particularly with a view to avoiding unnecessarily long periods of pre-trial detention.

PUBLIC

ARTICLE 117

Definitions

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

(a) "arrest warrant" means a judicial decision issued by a Member State or by the United Kingdom, in respect of Gibraltar, with a view to the arrest and surrender by the United Kingdom, in respect of Gibraltar, or a Member State of a requested person for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order;

(b) "executing judicial authority" means the judicial authority of the executing Member State, or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, which is competent to execute the arrest warrant by virtue of the domestic law of that Member State or of the United Kingdom, in respect of Gibraltar;

(c) "issuing judicial authority" means the judicial authority of the issuing Member State or of the United Kingdom, in respect of Gibraltar, which is competent to issue an arrest warrant by virtue of the domestic law of that Member State or of the United Kingdom, in respect of Gibraltar;

(d) "judicial authority" means an authority that is, under the domestic law of a Member State or of the United Kingdom, in respect of Gibraltar, a judge, a court or a public prosecutor; a public prosecutor is considered a judicial authority only to the extent that domestic law so provides;

(e) "third country" means a country other than a Member State or the United Kingdom or the United Kingdom, in respect of Gibraltar.

ARTICLE 118

Scope

1. An arrest warrant may be issued for acts punishable by the law of the issuing Member State or of the United Kingdom, in respect of Gibraltar, when it is the issuing actor, 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 or detention orders of at least four months.

2. Without prejudice to paragraphs 3 and 4, surrender is subject to the condition that the acts for which the arrest warrant has been issued constitute an offence under the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, whatever the constituent elements or however it is described.

3. Subject to Article 119, points (b) to (h) of Article 120(1) and Articles 121, 122 and 123, the competent authorities of the United Kingdom, in respect of Gibraltar, if it is the executing actor, or of the executing Member State shall not refuse to execute an arrest warrant issued in relation to the following behaviour where such behaviour is punishable by deprivation of liberty or a detention order of a maximum period of at least 12 months:

(a) 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, done at Strasbourg on 27 January 1977, or in relation to illicit trafficking in narcotic drugs and psychotropic substances, or murder, grievous bodily injury, kidnapping, illegal restraint, hostage-taking or rape, even where that person does not take part in the actual execution of the offence or offences concerned; such contribution must be intentional and made with the knowledge that the participation will contribute to the achievement of the group's criminal activities; or

(b) terrorism as defined in Annex 13.

4. The Union, acting on behalf of any of its Member States, and the United Kingdom, in respect of Gibraltar, may each notify the Specialised Committee on the Circulation of Persons that, on the basis of reciprocity, the condition of double criminality referred to in paragraph 2 will not be applied, provided that the offence on which the warrant is based is:

(a) one of the offences listed in paragraph 5, as defined by the law of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor; and

PUBLIC

(b) punishable in the issuing Member State or in the United Kingdom, in respect of Gibraltar, if it is the issuing actor by a custodial sentence or a detention order for a maximum period of at least three years.

5. The offences referred to in paragraph 4 are:

(a) participation in a criminal organisation;

(b) terrorism as defined in Annex 13;

(c) trafficking in human beings;

(d) sexual exploitation of children and child pornography;

(e) illicit trafficking in narcotic drugs and psychotropic substances;

(f) illicit trafficking in weapons, munitions and explosives;

(g) corruption, including bribery;

(h) fraud, including that affecting the financial interests of the United Kingdom, in respect of Gibraltar, a Member State or the Union;

(i) laundering of the proceeds of crime;

(j) counterfeiting currency;

PUBLIC

(k) computer-related crime;

(l) environmental crime, including illicit trafficking in endangered animal species and endangered plant species and varieties;

(m) facilitation of unauthorised entry and residence;

(n) murder;

(o) grievous bodily injury;

(p) illicit trade in human organs and tissue;

(q) kidnapping, illegal restraint and hostage-taking;

(r) racism and xenophobia;

(s) organised or armed robbery;

(t) illicit trafficking in cultural goods, including antiques and works of art;

(u) swindling;

(v) racketeering and extortion;

(w) counterfeiting and piracy of products;

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(x) forgery of administrative documents and trafficking therein;

(y) forgery of means of payment;

(z) illicit trafficking in hormonal substances and other growth promoters;

(aa) illicit trafficking in nuclear or radioactive materials;

(bb) trafficking in stolen vehicles;

(cc) rape;

(dd) arson;

(ee) crimes within the jurisdiction of the International Criminal Court;

(ff) unlawful seizure of aircraft, ships or spacecraft; and

(gg) sabotage.

PUBLIC

ARTICLE 119

Grounds for mandatory non-execution of the arrest warrant

The execution of the arrest warrant shall be refused:

(a) if the offence on which the arrest warrant is based is covered by an amnesty in the executing Member State or in the United Kingdom, in respect of Gibraltar, when it is the executing actor, where the competent authorities of that Member State or of the United Kingdom, in respect of Gibraltar, had jurisdiction to prosecute the offence under the criminal law of the executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor;

(b) if the executing judicial authority is informed that the requested person has been finally judged by a Member State or by the United Kingdom or by the United Kingdom, in respect of Gibraltar in respect of the same acts, provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced under the law of the Member State by which the requested person has been sentenced or of the United Kingdom or of the United Kingdom, in respect of Gibraltar, where the requested person has been sentenced by any of these; or

(c) if the person who is the subject of the arrest warrant may not, owing to the person's age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.

PUBLIC

ARTICLE 120

Other grounds for non-execution of the arrest warrant

1. The execution of the arrest warrant may be refused:

(a) if, in one of the cases referred to in Article 118(2), the act on which the arrest warrant is based does not constitute an offence under the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor; however, in relation to taxes or duties, customs and exchange, the execution of the arrest warrant shall not be refused on the grounds that the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes or duties, customs and exchange regulations as the law of the United Kingdom, in respect of Gibraltar, when it is the issuing actor or of the issuing Member State;

(b) if the person who is the subject of the arrest warrant is being prosecuted in the executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor, for the same act as that on which the arrest warrant is based;

(c) if the judicial authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, have decided either not to prosecute for the offence on which the arrest warrant is based or to halt proceedings, or if a final judgment which prevents further proceedings has been passed upon the requested person in a Member State or in the United Kingdom, in respect of Gibraltar, in respect of the same acts;

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(d) if the criminal prosecution or punishment of the requested person is statute-barred under the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, and the acts fall within the jurisdiction of that Member State or of the United Kingdom, in respect of Gibraltar, under its own criminal law;

(e) if the executing judicial authority is informed that the requested person has been finally judged by a third country or the United Kingdom in respect of the same acts provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced 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 and:

(i) if the executing actor is a Member State, the requested person is staying in, or is a national, or a resident, of that Member State; or

(ii) if the executing actor is the United Kingdom, in respect of Gibraltar, the requested person is a national of the United Kingdom holding a valid identity card or residence permit issued in Gibraltar by the competent authorities of the United Kingdom, in respect of Gibraltar or is a person staying in, or resident in, Gibraltar,

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and a competent authority of that Member State or of the United Kingdom, in respect of Gibraltar, undertakes to execute the sentence or detention order in accordance with the domestic law of the executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor; if consent of the requested person to the transfer of the sentence or detention order to the executing Member State or to the United Kingdom, in respect of Gibraltar, when it is the executing actor, is required, the competent authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, may refuse to execute the arrest warrant only after the requested person consents to the transfer of the sentence or detention order;

(g) if the arrest warrant relates to offences which:

(i) are regarded by the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, as having been committed in whole or in part in the executing Member State or in Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor, or in a place treated as such; or

(ii) have been committed outside the issuing Member State or Gibraltar when the United Kingdom, in respect of Gibraltar, is the issuing actor, and the law of the United Kingdom, in respect of Gibraltar, when it is the executing actor or of the executing Member State does not allow prosecution for the same offences if committed outside its territory;

(h) if there are reasons to believe on the basis of objective elements that the arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of the person's sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of those reasons;

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(i) if the arrest warrant has been issued for the purpose of executing a custodial sentence or a detention order and 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 Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor:

(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 the person was aware of the date and place of the scheduled trial;

and

(B) was informed that a decision may be handed down if that person did not appear for the trial;

or

(ii) being aware of the date and place of the scheduled trial, had given a mandate to a lawyer, who was either appointed by the person concerned or by a competent authority of the Member State or of the United Kingdom, in respect of Gibraltar, to defend them at the trial, and was indeed defended by that lawyer at the trial;

or

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(iii) after being served with the decision and being expressly informed about the right to a retrial or 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 the person did 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 the right to a retrial or 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 the person has to request such a retrial or appeal, as mentioned in the relevant arrest warrant.

PUBLIC

2. Where the arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions in point (i) (iv) of paragraph 1 and the person concerned has not previously received any official information about the existence of the criminal proceedings against them, that person 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 concerned. The request of the person concerned shall neither delay the surrender procedure nor delay the decision to execute the arrest warrant. The provision of the judgment to the person concerned shall be for information purposes only; it shall not be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. Where a person is surrendered under the conditions in point (i) (iv) of paragraph 1 and that person has requested a retrial or appeal, until those proceedings are finalised the detention of that person awaiting such retrial or appeal shall be reviewed in accordance with the domestic law of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor, 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.

PUBLIC

ARTICLE 121

Political offence exception

1. The execution of an arrest warrant may not be refused on the grounds that the offence may be regarded by the competent authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, as a political offence, as an offence connected with a political offence or as an offence inspired by political motives.

2. However, the United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on the Circulation of Persons 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 to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, if those offences of conspiracy or association correspond to the description of behaviour referred to in Article 118(3) of this Agreement; and

(c) terrorism as defined in Annex 13.

3. Where an arrest warrant has been issued by a Member State on behalf of which a notification as referred to in paragraph 2 has been made or where an arrest warrant has been issued by the United Kingdom, in respect of Gibraltar, and where the latter has made such notification, the United Kingdom, in respect of Gibraltar, when it is the executing actor, or the executing Member State may apply reciprocity.

PUBLIC

ARTICLE 122

Nationality exception

1. The execution of an arrest warrant may not be refused on the grounds that the requested person is a national of the executing Member State or, where the executing actor is the United Kingdom, in respect of Gibraltar, a national of the United Kingdom.

2. The United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on the Circulation of Persons that the United Kingdom's own nationals or that Member State's own nationals, as the case may be, will not be surrendered or that their surrender will be authorised only under certain specified conditions. The notification shall be based on reasons related to the fundamental principles or practice of the domestic legal order of the United Kingdom, in respect of Gibraltar, or the Member State on behalf of which a notification was made. In such a case, the Union, on behalf of any of its Member States or the United Kingdom, in respect of Gibraltar, as the case may be, may notify the Specialised Committee on the Circulation of Persons within a reasonable time after the receipt of the other Party's notification that the executing judicial authorities of the Member State or of the United Kingdom, in respect of Gibraltar, as the case may be, may refuse to surrender own nationals as referred to in paragraph 1 to that Member State or the United Kingdom, in respect of Gibraltar, or that surrender shall be authorised only under certain specified conditions.

PUBLIC

3. In circumstances where a Member State or the United Kingdom, in respect of Gibraltar, has refused to execute an arrest warrant on the basis that, in the case of the United Kingdom, in respect of Gibraltar, the United Kingdom has made a notification or, in the case of a Member State, the Union has made a notification on its behalf, as referred to in paragraph 2, the competent authorities of that Member State or of the United Kingdom, in respect of Gibraltar, shall consider instituting proceedings against the national of the United Kingdom or the Member State, as the case may be, which are commensurate with the subject matter of the arrest warrant, having taken into account the views of the competent authorities of the United Kingdom, in respect of Gibraltar, if it is the issuing actor or of the issuing Member State. In circumstances where a judicial authority decides not to institute such proceedings, the victim of the offence on which the arrest warrant is based shall be able to receive information on the decision in accordance with the applicable domestic law.

4. Where, in accordance with paragraph 3, the competent authorities of a Member State or of the United Kingdom, in respect of Gibraltar, institute proceedings against own nationals as referred to in paragraph 1, the competent authorities of that Member State or of the United Kingdom, in respect of Gibraltar, shall be able to take appropriate measures to assist the victims and witnesses, particularly with regard to the way in which the proceedings are conducted, in the following circumstances:

(a) where proceedings are being instituted in a Member State, where they are persons resident in the United Kingdom or in Gibraltar or in another Member State;

(b) where proceedings are being instituted in the United Kingdom, in respect of Gibraltar, where they are residents of a Member State.

PUBLIC

ARTICLE 123

Guarantees to be given by the competent authorities
of the issuing Member State or of the United Kingdom, in respect of Gibraltar,
if it is the issuing actor in particular cases

PUBLIC

1. The execution of the arrest warrant by the executing judicial authority may be subject to the following guarantees:

(a) if the offence on which the arrest warrant is based is punishable by a custodial life sentence or a lifetime detention order in the issuing Member State or in the United Kingdom, in respect of Gibraltar, if it is the issuing actor, the competent authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, may make the execution of the arrest warrant subject to the condition that the competent authorities of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor, give a guarantee deemed sufficient by the competent authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, that the competent authorities of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor, 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 for which the person is entitled to apply under the law or practice of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor, aiming at the non-execution of such penalty or measure;

(b) if a person who is the subject of an arrest warrant for the purposes of prosecution is a national or resident of the executing Member State or, where the executing actor is the United Kingdom, in respect of Gibraltar, a national of the United Kingdom or a person resident in Gibraltar, the surrender of that person may be subject to the condition that the person, after being heard, is returned to the executing Member State or to Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor, in order to serve there the custodial sentence or detention order passed against them in the issuing Member State or in Gibraltar when the issuing actor is the United Kingdom, in respect of Gibraltar; if the consent of the requested person to the transfer of the sentence or detention order to the executing Member State or to Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor, is required, the guarantee that the person be returned to the executing Member State or to Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor, to serve the person's sentence is subject to the condition that the requested person, after being heard, consents to be returned to the executing Member State or to Gibraltar when the United Kingdom, in respect of Gibraltar, is the executing actor;

(c) if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person, the executing judicial authority may require, as appropriate, additional guarantees as to the treatment of the requested person after the person's surrender before it decides whether to execute the arrest warrant.

2. The Specialised Committee on the Circulation of persons shall have the power to adopt any modifications to this Article as may be necessary to reflect changes made in the Trade and Cooperation Agreement.

PUBLIC

ARTICLE 124

Recourse to the central authority

1. The United Kingdom, in respect of Gibraltar, shall notify the Specialised Committee on the Circulation of Persons of the central authority of the United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may notify the Specialised Committee on the Circulation of Persons of the central authority for each Member State having designated such an authority, or, if the legal system of the relevant Member State or of the United Kingdom, in respect of Gibraltar, so provides, of more than one central authority to assist the competent judicial authorities.

2. When notifying the Specialised Committee on the Circulation of Persons under paragraph 1, the United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each indicate that, as a result of the organisation of the internal judicial system of the relevant Member State or the United Kingdom, in respect of Gibraltar, the central authority or central authorities are responsible for the administrative transmission and receipt of arrest warrants, as well as for all other official correspondence relating to the administrative transmission and receipt of arrest warrants. Such transmission of arrest warrants shall be made in accordance with Article 126 and, accordingly, Article 6(1). Such indication shall be binding upon all the authorities of the issuing Member State or the United Kingdom, in respect of Gibraltar, where it is the issuing actor.

ARTICLE 125

Content and form of the arrest warrant

PUBLIC

1. The arrest warrant shall contain the following information set out in accordance with the form contained in Annex 14:

(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 judgment, an arrest warrant or any other enforceable judicial decision having the same effect that falls within the scope of Article 118;

(d) the nature and legal classification of the offence, particularly in respect of Article 118;

(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 Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor; and

(g) if possible, other consequences of the offence.

2. The Specialised Committee on the Circulation of Persons may amend the form referred to in Annex 14 as may be necessary.

The Specialised Committee on the Circulation of Persons shall adopt any modifications to the form in Annex 14 as may be necessary to reflect changes made to Annex 43 of the Trade and Cooperation Agreement.

3. The arrest warrant shall be translated into the official language or one of the official languages of the executing Member State or into English when the United Kingdom, in respect of Gibraltar, is the executing actor. The Union, acting on behalf of any of its Member States, may notify the Specialised Committee on the Circulation of Persons that a translation in one or more other official languages of a Member State will be accepted.

ARTICLE 126

Transmission of an arrest warrant

1. Article 6(1) shall apply only in relation to initial transmission of the arrest warrant, which shall be transmitted in accordance with that Article and the provisions of this Chapter.

2. If the location of the requested person is known, the issuing judicial authority may transmit, in accordance with Article 6(1), the arrest warrant to the competent authority of the executing Member State, or the United Kingdom, in respect of Gibraltar, when it is the executing actor, allowing that authority to establish the authenticity of the arrest warrant.

PUBLIC

ARTICLE 127

Detailed procedures for transmitting an arrest warrant

1. If the issuing judicial authority does not know which authority is the competent executing judicial authority, it shall make the requisite enquiries in order to obtain that information from the competent authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.

2. As an alternative to Article 126, the issuing judicial authority may request the International Criminal Police Organisation ("Interpol") to transmit an arrest warrant.

3. 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 Member States and the United Kingdom, in respect of Gibraltar.

4. 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 the executing Member State or the United Kingdom, in respect of Gibraltar, where it is the executing actor, and shall inform the issuing judicial authority accordingly.

PUBLIC

ARTICLE 128

Rights of a requested person

1. If a requested person is arrested for the purpose of the execution of an arrest warrant, the executing judicial authority, in accordance with the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, shall inform that person of the arrest warrant and of its contents, and also of the possibility of consenting to surrender to the United Kingdom, in respect of Gibraltar, if it is the issuing actor or the issuing Member State.

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 arrest warrant proceedings shall have the right to be assisted by an interpreter and to be provided with a written translation in the native language of the requested person or in any other language which that person speaks or understands, in accordance with the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.

3. A requested person shall have the right to be assisted by a lawyer upon arrest, in accordance with the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.

4. The requested person shall be informed of the person's right to appoint a lawyer in the issuing Member State or in the United Kingdom, in respect of Gibraltar, when it is the issuing actor, for the purpose of assisting the requested person in the United Kingdom, in respect of Gibraltar, when it is the executing actor or in the executing Member State in the arrest warrant proceedings. This paragraph is without prejudice to the time limits set out in Article 140.

PUBLIC

5. A requested person who is arrested shall have the right to have the consular authorities of that person's state of nationality, or if that person is stateless, the consular authorities of the state where that person usually resides, informed of the arrest without undue delay and to communicate with those authorities, if that person so wishes.

PUBLIC

ARTICLE 129

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 Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor. The person may be released provisionally at any time in accordance with the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor provided that that Member State or the United Kingdom, in respect of Gibraltar, takes all the measures it deems necessary to prevent the person from absconding.

ARTICLE 130

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, the express renunciation of entitlement to the speciality rule referred to in Article 144(2) must be given before the executing judicial authority, in accordance with the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.

2. Each Member State and the United Kingdom, in respect of Gibraltar, shall adopt the measures necessary to ensure that the consent and, where appropriate, the renunciation referred to in paragraph 1 are established in such a way as to show 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, the renunciation referred to in paragraph 1 shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.

4. In principle, consent may not be revoked. A Member State or the United Kingdom, in respect of Gibraltar, may provide that the consent and, if appropriate, the renunciation referred to in paragraph 1 may be revoked in accordance with the rules applicable under its domestic law. In such a case, the period between the date of the consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 140. The United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on the Circulation of Persons that it wishes to have recourse to this possibility, specifying the procedures whereby revocation of the consent is possible and any amendments to those procedures.

PUBLIC

ARTICLE 131

Hearing of the requested person

Where the arrested person does not consent to surrender as referred to in Article 130, that person shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor.

PUBLIC

ARTICLE 132

Surrender decision

1. The executing judicial authority shall decide whether the person is to be surrendered within the time limits and in accordance with the conditions defined in this Chapter, in particular the principle of proportionality as set out in Article 116.

2. If the executing judicial authority finds the information communicated by the competent authorities of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Article 116, Articles 119 to 121, Article 123 and Article 125, 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 provided for in Article 134.

3. The issuing judicial authority may forward any additional useful information to the executing judicial authority at any time.

ARTICLE 133

Decision in the event of multiple requests

1. If judicial authorities of two or more Member States or one or more Member States and the United Kingdom, in respect of Gibraltar, have issued a European arrest warrant or an arrest warrant for the same person, the decision as to which of those arrest warrants is to be executed shall be taken by the executing judicial authority, with due consideration of all the circumstances, especially the relative seriousness of the offences and place of the offences, the respective dates of the arrest warrants or European arrest warrants and whether they have been issued for the purposes of prosecution or for the execution of a custodial sentence or detention order, and of legal obligations of Member States deriving from Union law regarding, in particular, the principles of freedom of movement and non-discrimination on grounds of nationality.

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 country or an arrest warrant presented by the United Kingdom pursuant to the Trade and Cooperation Agreement (a "TCA arrest warrant"), the decision as to whether the arrest warrant or the extradition request or TCA arrest warrant takes precedence shall be taken by the competent authority of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor 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 is without prejudice to the obligations of Member States and the United Kingdom, in respect of Gibraltar, under the Statute of the International Criminal Court.

PUBLIC

ARTICLE 134

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 surrender, the final decision on the execution of the arrest warrant shall be taken within ten days after the consent was given.

3. In other cases, the final decision on the execution of the arrest warrant shall be taken within 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 of that fact, giving the reasons for the delay. In such cases, the time limits may be extended by a further 30 days.

5. 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 the effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute an arrest warrant.

PUBLIC

ARTICLE 135

Situation pending the decision

1. Where the arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority shall either:

(a) agree that the requested person should be heard according to Article SURRENDER.22 (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 Member State or to Gibraltar where the United Kingdom, in respect of Gibraltar, is the executing actor, to attend hearings which concern that person as part of the surrender procedure.

ARTICLE 136

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority. To that end, the requested person shall be assisted by a lawyer designated in accordance with the law of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor.

PUBLIC

2. The requested person shall be heard in accordance with the law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor 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 the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor to take part in the hearing of the requested person in order to ensure the proper application of this Article.

PUBLIC

ARTICLE 137

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor, the time limits referred to in Article 134 only start running when, or if, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

2. The competent authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor 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 Member State or of the United Kingdom or the United Kingdom, in respect of Gibraltar, when it is the executing actor, the executing judicial authority shall request that authority to exercise that power without delay. Where power to waive the privilege or immunity lies with an authority of another Member State, the United Kingdom, the United Kingdom, in respect of Gibraltar, a third country or international organisation, the issuing judicial authority shall request that authority to exercise that power.

PUBLIC

ARTICLE 138

Competing international obligations

1. This Agreement does not prejudice the obligations of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, where the requested person has been extradited to that Member State or to the United Kingdom, in respect of Gibraltar, from a third country or the United Kingdom and where that person is protected by provisions of the arrangement under which that person was extradited concerning the speciality rule. The executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor shall take all necessary measures for requesting without delay the consent of the third country or the United Kingdom from which the requested person was extradited so that the requested person can be surrendered to the issuing Member State or to the United Kingdom, in respect of Gibraltar, if it is the issuing actor. The time limits referred to in Article 134 do not start running until the day on which the speciality rule ceases to apply.

2. Pending the decision of the third country or the United Kingdom from which the requested person was extradited executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor shall ensure that the material conditions necessary for effective surrender remain fulfilled.

PUBLIC

ARTICLE 139

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 140

Time limits for surrender of the person

1. The requested person shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. The requested person shall be surrendered no later than ten days after the final decision on the execution of the arrest warrant.

3. If the surrender of the requested person within the time limit in paragraph 2 is prevented by circumstances beyond the control of the competent authorities of any of the Member States or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, 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 ten 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 the surrender would manifestly endanger the requested person's life or health. The execution of the arrest warrant shall take place as soon as those 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 ten days of the new date agreed.

5. Upon the expiry of the time limits referred to in paragraphs 2 to 4, if the requested person is still being held in custody, that person shall be released. The executing and issuing judicial authorities shall contact each other as soon as it appears that a person is to be released under this paragraph and agree the arrangements for the surrender of that person.

PUBLIC

ARTICLE 141

Postponed or conditional surrender

1. After deciding to execute the arrest warrant, the executing judicial authority may postpone the surrender of the requested person so that the requested person may be prosecuted in the executing Member State or in the United Kingdom, in respect of Gibraltar, when it is the executing actor or, if the requested person has already been sentenced, so that the requested person may serve, a sentence passed for an act other than that referred to in the arrest warrant in the executing Member State or in the United Kingdom, in respect of Gibraltar, when it is the executing actor.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State or to the United Kingdom, in respect of Gibraltar, if it is the issuing actor 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 Member State or the United Kingdom, in respect of Gibraltar, if it is the issuing actor.

ARTICLE 142

Transit

1. Each Member State, the United Kingdom and the United Kingdom, in respect of Gibraltar, shall permit the transit through their territory of a requested person who is being surrendered provided that they have been given information on:

(a) the identity and nationality of the person subject to the arrest warrant;

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(b) the existence of an arrest warrant;

(c) the nature and legal classification of the offence; and

(d) the description of the circumstances of the offence, including the date and place.

2. Where a notification has been made by the United Kingdom, in respect of Gibraltar, in accordance with Article 122(2) to the effect that nationals of the United Kingdom will not be surrendered or that surrender will be authorised only under certain specified conditions, the United Kingdom or the United Kingdom, in respect of Gibraltar, as the case may be, may refuse the transit of nationals of the United Kingdom under the same terms or submit it to the same conditions.

3. The Member State on behalf of which a notification has been made in accordance with Article 122(2) to the effect that its own nationals will not be surrendered or that surrender will be authorised only under certain specified conditions, may refuse the transit of its own nationals through its territory under the same: terms or submit it to the same conditions.

4. The Member States, the United Kingdom and the United Kingdom, in respect of Gibraltar, shall notify the Specialised Committee on the Circulation of Persons of the authorities responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests.

5. The transit request and the information referred to in paragraph 1 may be addressed to the authority notified pursuant to paragraph 4 by any means capable of producing a written record. The decision of the notified authority of the requested Member State or of the United Kingdom or of the United Kingdom, in respect of Gibraltar, when it is the requested actor shall be notified by the same procedure.

PUBLIC

6. This Article does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs the competent authorities of the issuing Member State or the United Kingdom, in respect of Gibraltar, if it is the issuing actor shall provide the authority notified pursuant to paragraph 4 with the information referred to in paragraph 1.

7. Where a transit concerns a person who is to be extradited, or surrendered, from a third country or the United Kingdom to a Member State or the United Kingdom, in respect of Gibraltar, or between Member States, this Article applies *mutatis mutandis*. In particular, references to an "arrest warrant" shall be treated as references to an "extradition request" or a "European Arrest Warrant", or a "TCA arrest warrant", as the case may be.

ARTICLE 143

Deduction of the period of detention served
in the executing Member State or in Gibraltar

1. The issuing Member State or the United Kingdom, in respect of Gibraltar, if it is the issuing actor 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 Member State, or in Gibraltar if the United Kingdom, in respect of Gibraltar, is the issuing actor, as a result of a custodial sentence or detention order being passed.

2. 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 notified under Article 124 to the issuing judicial authority at the time of the surrender.

PUBLIC

ARTICLE 144

Possible prosecution for other offences

1. The United Kingdom, in respect of Gibraltar, may notify the Specialised Committee on the Circulation of Persons that, in relations with Member States on behalf of which the Union has given the notification referred to in paragraph 2, its consent is presumed to have been given for the prosecution, sentencing or detention of a person with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to the person's surrender, other than that for which that person was surrendered, unless in a particular case the executing judicial authority of the United Kingdom, in respect of Gibraltar, states otherwise in its decision on surrender.

2. The Union, acting on behalf of any of its Member States, may notify the Specialised Committee on the Circulation of Persons that, where the United Kingdom, in respect of Gibraltar, has given the notification referred to in paragraph 1, the consent of those Member States is presumed to have been given for the prosecution, sentencing or detention of a person with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to the person's surrender, other than that for which that person was surrendered, unless in a particular case the executing judicial authority of the Member State states otherwise in its decision on surrender.

3. Except in the cases referred to in paragraphs 1, 2 and 4, a person surrendered may not be prosecuted, sentenced or otherwise deprived of liberty for an offence committed prior to that person's surrender other than that for which the person was surrendered.

PUBLIC

4. Paragraph 3 does not apply in the following cases:

(a) the person, having had an opportunity to leave the Member State to which that person has been surrendered or Gibraltar when they have been surrendered to the United Kingdom, in respect of Gibraltar, has not done so within 45 days of that person's final discharge or has returned to that Member State or Gibraltar, as the case may be, 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) 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 of a financial penalty, even if the penalty or measure may give rise to a restriction of the person's personal liberty;

(e) the person consented to be surrendered, where appropriate at the same time as the person renounced the speciality rule, in accordance with Article 130;

(f) the person, after the person's surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding the person's surrender; renunciation must be given before the competent judicial authority of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor and be recorded in accordance with the domestic law of that Member State or the United Kingdom, in respect of Gibraltar, as the case may be; the renunciation must 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 person shall have the right to a lawyer; and

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(g) the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

5. A request for consent shall be submitted to the executing judicial authority, accompanied by the information referred to in Article 125(1) and a translation as referred to in Article 125(2). Consent shall be given where 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 119 otherwise may be refused only on the grounds referred to in Article 120, or Article 121(2) and Article 122(2). The decision shall be taken no later than 30 days after receipt of the request. For the situations laid down in Article 123, the competent authorities of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor must give the guarantees provided for therein.

ARTICLE 145

Surrender or subsequent extradition

1. The United Kingdom, in respect of Gibraltar, may notify the Specialised Committee on the Circulation of Persons that, in relations with Member States on behalf of which the Union has given the notification referred to in paragraph 2, its consent to the subsequent surrender by one of those Member States, of a person initially surrendered to that Member State by the United Kingdom, in respect of Gibraltar, pursuant to an arrest warrant, to another one of those Member States pursuant to an European arrest warrant issued for an offence committed prior to that person's surrender, is presumed to have been given, unless in a particular case the executing judicial authority of the United Kingdom, in respect of Gibraltar, states otherwise in its decision on surrender to the Member State deciding on the subsequent surrender.

2. The Union, acting on behalf of any of its Member States, may notify the Specialised Committee on the Circulation of Persons that, where the United Kingdom, in respect of Gibraltar, has given the notification referred to in paragraph 1, the consent of those Member States to the subsequent surrender by the United Kingdom, in respect of Gibraltar, of a person initially surrendered to the United Kingdom, in respect of Gibraltar, by one of those Member States pursuant to an arrest warrant, to another one of those Member States pursuant to an arrest warrant issued for an offence committed prior to that person's surrender, is presumed to have been given, unless in a particular case the executing judicial authority of the Member State which initially surrendered the person to the United Kingdom, in respect of Gibraltar, states otherwise in its decision on that surrender.

3. In any case, a person who has been surrendered to the issuing Member State or to the United Kingdom, in respect of Gibraltar, if it is the issuing actor pursuant to an arrest warrant or European arrest warrant may be subsequently surrendered to a Member State other than the executing Member State or to the United Kingdom, in respect of Gibraltar, pursuant to an arrest warrant or European arrest warrant issued for any offence committed prior to the person's surrender without the consent of the executing judicial authority in the following cases:

(a) the requested person, having had an opportunity to leave the Member State to which that person has been surrendered or Gibraltar when it has been surrendered to the United Kingdom, in respect of Gibraltar, has not done so within 45 days of that person's final discharge, or has returned to that Member State or to Gibraltar after leaving it;

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(b) the requested person consents to be surrendered to a Member State other than the executing Member State or to the United Kingdom, in respect of Gibraltar, pursuant to an arrest warrant or European arrest warrant; consent must be given before the competent judicial authorities of the issuing Member State or the United Kingdom, in respect of Gibraltar, if it is the issuing actor and be recorded in accordance with the domestic law of that Member State or of the United Kingdom, in respect of Gibraltar; it must 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; and

(c) the requested person is not subject to the speciality rule, in accordance with points (a), (e), (f) or (g) of Article 144(3).

4. The executing judicial authority shall consent to the surrender to another Member State or to the United Kingdom, in respect of Gibraltar, in accordance with the following rules:

(a) the request for consent shall be submitted in accordance with Article 126, accompanied by the information set out in Article 125(1) and a translation as referred to in Article 125(2);

(b) consent shall be given where 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; and

(d) consent shall be refused on the grounds referred to in Article 119 and otherwise may be refused only on the grounds referred to in Article 120, Article 121(2) and Article 122(2).

PUBLIC

5. For the situations referred to in Article 123, the competent authorities of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor must give the guarantees provided for therein.

6. Notwithstanding paragraphs 1 and 2, a person who has been surrendered pursuant to an arrest warrant shall not be extradited to a third country or surrendered to the United Kingdom without the consent of the competent authority of the Member State which surrendered the person or of the United Kingdom, in respect of Gibraltar, if it surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State or the United Kingdom, in respect of Gibraltar, as the case may be, is bound, as well as with the domestic law of that Member State or of the United Kingdom, in respect of Gibraltar.

ARTICLE 146

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 the domestic law of the executing Member State or of the United Kingdom, in respect of Gibraltar, when it is the executing actor, 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.

PUBLIC

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 executing Member State or in Gibraltar if the United Kingdom, in respect of Gibraltar, is the executing actor, the authorities of that Member State or of the United Kingdom, in respect of Gibraltar, may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the United Kingdom, in respect of Gibraltar, if it is the issuing actor or to the issuing Member State on condition that it is returned.

4. Any rights which the authorities of the executing Member State or of the United Kingdom, in respect of Gibraltar, if it is the executing actor or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist the competent authority of the United Kingdom, in respect of Gibraltar, if it is the issuing actor or of the issuing Member State shall return the property without charge to the executing Member State or to Gibraltar if the United Kingdom, in respect of Gibraltar, is the executing actor as soon as the criminal proceedings have been terminated.

ARTICLE 147

Expenses

1. Expenses incurred in the executing Member State or in Gibraltar where the United Kingdom, in respect of Gibraltar, is the executing actor for the execution of an arrest warrant shall be borne by the authorities of the executing Member State or the United Kingdom, in respect of Gibraltar, when it is the executing actor.

PUBLIC

2. All other expenses shall be borne by the authorities of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor.

PUBLIC

ARTICLE 148

Relation to other legal instruments

1. Without prejudice to their application in relations between Member States or the United Kingdom, in respect of Gibraltar, on the one side, and third countries, on the other side, this Chapter, from the date of entry into force of this Agreement, replaces the corresponding provisions of the following conventions applicable in the field of extradition in relations between the United Kingdom, in respect of Gibraltar, on the one side, and Member States, on the other side:

(a) the European Convention on Extradition, done at Paris on 13 December 1957, and its additional protocols; and

(b) the European Convention on the Suppression of Terrorism, as far as extradition is concerned.

2. Where the Conventions referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Chapter does not apply, those Conventions continue to govern the relations existing between those territories and the United Kingdom, in respect of Gibraltar.

ARTICLE 149

Review of notifications

When carrying out a joint review of this Agreement in accordance with Article 330, the Parties shall consider the need to maintain the notifications made under Article 118(4), Article 121(2) and Article 122(2). If the notifications referred to in Article 122(2) are not renewed, they shall expire at the later of the dates of four years after the date of entry into force of this Agreement or completion of the joint review of this Agreement in accordance with Article 330. Notifications as referred to in Article 122(2) may only be renewed or newly made during the three months prior to the fourth anniversary of the entry into force of this Agreement and, subsequently, every five years thereafter, provided that the conditions set out in Article 122(2) are met at that time.

ARTICLE 150

Ongoing arrest warrants in case of disapplication

Notwithstanding Articles, 66, 67 and 334, the provisions of this Chapter 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.

PUBLIC

ARTICLE 151

Application to existing European arrest warrants

This Chapter shall apply in respect of European arrest warrants issued in accordance with Council Framework Decision 2002/584/JHA[1] by the competent authorities of a Member State or the United Kingdom, in respect of Gibraltar, before 31 December 2020 where the requested person has not been arrested for the purpose of its execution by the date of entry into force of this Agreement.

PUBLIC

CHAPTER 5

MUTUAL ASSISTANCE

ARTICLE 152

Objective

1. The objective of this Chapter is to supplement the provisions, and facilitate the application between Member States, on the one side, and the United Kingdom, in respect of Gibraltar, on the other side, of:

(a) the European Convention on Mutual Assistance in Criminal Matters, done at Strasbourg on 20 April 1959 (the "European Mutual Assistance Convention");

[1] Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ EU L 190, 18.7.2002, p. 1, ELI: http://data.europa.eu/eli/dec_framw/2002/584/oj).

(b) the Additional Protocol to the European Mutual Assistance Convention, done at Strasbourg on 17 March 1978;

(c) the Second Additional Protocol to the European Mutual Assistance Convention, done at Strasbourg on 8 November 2001; and

(d) the Third Additional Protocol to the European Mutual Assistance Convention, done at Valletta on 19 September 2025.

2. This Chapter is without prejudice to the provisions of Chapter 3 of this Title, which takes precedence over this Chapter.

ARTICLE 153

Definition of competent authority

For the purposes of this Chapter, "competent authority" means any authority of a Member State or of the United Kingdom, in respect of Gibraltar, which is competent to send or receive requests for mutual assistance in accordance with the provisions of the European Mutual Assistance Convention and its Protocols and, where applicable, as defined by Member States or the United Kingdom, in respect of Gibraltar, in their respective declarations addressed to the Secretary General of the Council of Europe. "Competent authority" also includes the Union bodies notified in accordance with Article 68; with regard to such Union bodies, the provisions of this Chapter apply accordingly.

PUBLIC

ARTICLE 154

Form for a request for mutual assistance

1. Requests for mutual assistance shall be made using the standard form set out in Annex 15.

2. The Specialised Committee on the Circulation of Persons may amend the form in Annex 15 as may be necessary.

3. The Specialised Committee on the Circulation of Persons shall adopt any modifications to the form in Annex 15 as may be necessary to reflect changes made to the form for requests for mutual assistance between the United Kingdom and the Member States under the Trade and Cooperation Agreement.

4. The Specialised Committee on the Circulation of Persons may also undertake to establish a standard form for notifications such as those referred to in paragraph 2 of Article 3 of the Third Additional Protocol to the European Mutual Assistance Convention. The Specialised Committee on the Circulation of Persons may amend such standard form for notifications as may be necessary.

PUBLIC

ARTICLE 155

Conditions for a request for mutual assistance

1. The competent authority of the requesting Member State or of the United Kingdom, in respect of Gibraltar, if it is the requesting actor, may only make a request for mutual assistance if it is satisfied that the following conditions are met:

(a) the request is necessary and proportionate for the purpose of the proceedings, taking into account the rights of the suspected or accused person; and

(b) the investigative measure or investigative measures indicated in the request could have been ordered under the same conditions in a similar domestic case.

2. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, may consult the requesting Member State or the United Kingdom, in respect of Gibraltar, if it made the request, if the competent authority of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, is of the view that the conditions in paragraph 1 are not met. After the consultation, the competent authority of the requesting Member State or of the United Kingdom, in respect of Gibraltar, if it made the request, may decide to withdraw the request for mutual assistance.

PUBLIC

ARTICLE 156

Recourse to a different type of investigative measure

1. Wherever possible, the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall consider recourse to an investigative measure other than the measure indicated in the request for mutual assistance if:

(a) the investigative measure indicated in the request does not exist under the law of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor; 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 European Mutual Assistance Convention and its Protocols and under Article 158, paragraph 1 of this Article does not apply to the following investigative measures, which shall always be available under the law of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor:

(a) the obtaining of information contained in databases held by police or judicial authorities that is accessible by the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, in the framework of criminal proceedings;

PUBLIC

(b) the hearing of a witness, expert, victim, suspected or accused person or third party in the requested Member State or in Gibraltar, if the United Kingdom, in respect of Gibraltar, is the requested actor;

(c) any non-coercive investigative measure as defined under the law of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor; and

(d) the identification of persons holding a subscription to a specified phone number or IP address.

3. The competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, may also have recourse to an investigative measure other than the measure indicated in the request for mutual assistance if the investigative measure selected by the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, would achieve the same result by less intrusive means than the investigative measure indicated in the request.

4. If the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, decides to have recourse to a measure other than that indicated in the request for mutual assistance as referred to in paragraphs 1 or 3, it shall first inform the competent authority of the United Kingdom, in respect of Gibraltar, if it made the request, or of the requesting Member State, which may decide to withdraw or supplement the request.

PUBLIC

5. If the investigative measure indicated in the request does not exist under the law of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, or would not be available in a similar domestic case, and there is no other investigative measure which would have the same result as the investigative measure requested, the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall inform the competent authority of the United Kingdom, in respect of Gibraltar, if it made the request, or of the requesting Member State, that it is not possible to provide the assistance requested.

PUBLIC

ARTICLE 157

Obligation to inform

The competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall inform the competent authority of the United Kingdom, in respect of Gibraltar, if it made the request, or of the requesting Member State, by any means and without undue delay if:

(a) it is impossible to execute the request for mutual assistance due to the fact that the request is incomplete or manifestly incorrect; or

(b) the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor 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 United Kingdom, in respect of Gibraltar, if it made the request, or of the requesting Member State, to take further action in the specific case.

PUBLIC

ARTICLE 158

Ne bis in idem

Mutual assistance may be refused, in addition to the grounds for refusal provided for under the European Mutual Assistance Convention and its Protocols, on the ground that the person in respect of whom the assistance is requested and who is subject to criminal investigations, prosecutions or other proceedings, including judicial proceedings, in the requesting Member State or in the United Kingdom, in respect of Gibraltar, if it made the request, has been finally judged by an authority of the United Kingdom, of the United Kingdom, in respect of Gibraltar, or of a Member State, as the case may be, in respect of the same acts, provided that, if a penalty has been imposed, it has been enforced, is in the process of being enforced or can no longer be enforced, as the case may be, under the law of the United Kingdom, of the United Kingdom, in respect of Gibraltar, or of the Member State in which the person is being sentenced.

ARTICLE 159

Time limits

1. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall decide whether to execute the request for mutual assistance as soon as possible and in any event no later than 45 days after the receipt of the request and shall inform the competent authority of the United Kingdom, in respect of Gibraltar, if it made the request, or of the requesting Member State, of its decision.

2. A request for mutual assistance shall be executed as soon as possible and, in any event, no later than 90 days after the decision referred to in paragraph 1 or after the consultation referred to in Article 155(2) has taken place.

3. If 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 time limit than that provided for in paragraph 1 or 2 is necessary, or if it is indicated in the request that a measure for mutual assistance is to be carried out on a specific date, the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall take as full account as possible of that requirement.

PUBLIC

4. Where applicable, if a request for mutual assistance is made to take provisional measures pursuant to Article 24 of the Second Additional Protocol to the European Mutual Assistance Convention, the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall decide on the provisional measure, and shall communicate that decision to the competent authority of the United Kingdom, in respect of Gibraltar, if it made the request, or of the requesting Member State as soon as possible after the receipt of the request. Before lifting any provisional measure taken pursuant to this Article, the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, wherever possible, shall give the competent authority of the requesting the United Kingdom, in respect of Gibraltar, if it made the request, or of the requesting Member State, an opportunity to present its reasons in favour of continuing the measure.

5. If in a specific case, the time limit provided for in paragraph 1 or 2, or the time limit or specific date referred to in paragraph 3 cannot be met, or the decision on taking provisional measures in accordance with paragraph 4 is delayed, the competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall, without delay, inform the competent authority of the United Kingdom, in respect of Gibraltar, if it made the request, or of the requesting Member State, by any means, giving the reasons for the delay, and shall consult with the competent authority of the United Kingdom, in respect of Gibraltar, if it made the request, or of the requesting Member State, on the appropriate timing to execute the request for mutual assistance.

6. For greater certainty, the provisions of this Article take precedence over Article 6 of the Third Additional Protocol to the European Mutual Assistance Convention.

PUBLIC

ARTICLE 160

Transmission of requests for mutual assistance

1. Article 6(1) shall apply only in relation to the initial transmission of requests for mutual assistance and to the initial transmission of communications relating to spontaneous information and notifications referred to in Articles 3 and 4 of the Third Additional Protocol to the European Mutual Assistance Convention, which shall be transmitted in accordance with that Article and the respective provisions of the European Mutual Assistance Convention and its Protocols.

2. In addition to the channels of communication provided for under the European Mutual Assistance Convention and its Protocols, if direct transmission is provided, under their respective provisions, for requests for mutual assistance, and communications relating to spontaneous information and notifications referred to Articles 3 and 4 of the Third Additional Protocol to the European Mutual Assistance Convention, these may also be transmitted directly by public prosecutors of the United Kingdom, in respect of Gibraltar, to competent authorities of the Member States. Article 6(1) shall apply to the initial transmission of such requests for mutual assistance, and to the initial transmission of such communications relating to spontaneous information and notifications referred to Articles 3 and 4 of the Third Additional Protocol to the European Mutual Assistance Convention by public prosecutors of the United Kingdom, in respect of Gibraltar.

PUBLIC

3. In addition to the channels of communication provided for under the European Mutual Assistance Convention and its Protocols, in urgent cases or where competent authorities of two or more Member States and the United Kingdom, in respect of Gibraltar, need to coordinate judicial cooperation procedures, any request for mutual assistance, as well as spontaneous information, or notification referred to Articles 3 and 4 of the Third Additional Protocol to the European Mutual Assistance Convention, and by way of derogation from paragraph 1, may be transmitted via Europol or Eurojust in line with the provisions in the respective Chapters of this Agreement.

PUBLIC

ARTICLE 161

Joint Investigation Teams

If the competent authorities of Member States and of the United Kingdom, in respect of Gibraltar, set up a Joint Investigation Team, the relationship between Member States within the Joint Investigation Team shall be governed by Union law, notwithstanding the legal basis referred to in the Agreement on the setting up of the Joint Investigation Team.

CHAPTER 6

FREEZING AND CONFISCATION

PUBLIC

ARTICLE 162

Objective and principles of cooperation

1. The objective of this Chapter is to provide for cooperation between the United Kingdom, in respect of Gibraltar, on the one side, and the Member States, on the other side, to the widest extent possible for the purposes of investigations and proceedings aimed at the freezing of property with a view to subsequent confiscation thereof and investigations and proceedings aimed at the confiscation of property within the framework of proceedings in criminal matters. This does not preclude other cooperation pursuant to Article 171(5) and (6). This Chapter also provides for cooperation with Union bodies designated by the Union for the purposes of this Chapter.

2. The United Kingdom, in respect of Gibraltar, and the Member States shall comply, under the conditions provided for in this Chapter, with requests from a Member State or the United Kingdom, in respect of Gibraltar:

(a) for the confiscation of specific items of property, as well as for the confiscation of proceeds consisting of a requirement to pay a sum of money corresponding to the value of proceeds;

(b) for investigative assistance and provisional measures with a view to either form of confiscation referred to in point (a).

3. Investigative assistance and provisional measures sought under point (b) of paragraph 2 shall be carried out as permitted by and in accordance with the domestic law of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor. Where the request concerning one of these measures specifies formalities or procedures which are necessary under the domestic law of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, even if unfamiliar to the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, the latter shall comply with such requests to the extent that the action sought is not contrary to the fundamental principles of its domestic law.

4. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall ensure that the requests coming from another Member State or the United Kingdom, in respect of Gibraltar, to identify, trace, freeze or seize the proceeds and instrumentalities, receive the same priority as those made in the framework of domestic procedures.

5. When requesting confiscation, investigative assistance and provisional measures for the purposes of confiscation, the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, shall ensure that the principles of necessity and proportionality are respected.

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6. The provisions of this Chapter shall apply in place of the "international cooperation" Chapters of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, done at Warsaw on 16 May 2005 ("the 2005 Convention") and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg on 8 November 1990 ("the 1990 Convention"). Article 163 of this Agreement shall replace the corresponding definitions in Article 1 of the 2005 Convention and Article 1 of the 1990 Convention. The provisions of this Chapter shall not affect the obligations of the United Kingdom, in respect of Gibraltar, or Member States under the other provisions of the 2005 Convention and the 1990 Convention.

PUBLIC

ARTICLE 163

Definitions

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

(a) "confiscation" means a penalty or a measure ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property;

(b) "freezing" or "seizure" means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(c) "instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

(d) "judicial authority" means an authority that is, under domestic law, a judge, a court or a public prosecutor; a public prosecutor is considered a judicial authority only to the extent that domestic law so provides;

(e) "proceeds" means any economic benefit, derived from or obtained, directly or indirectly, from criminal offences, or an amount of money equivalent to that economic benefit; it may consist of any property as defined in this Article;

(f) "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property, which the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, considers to be:

(i) the proceeds of a criminal offence, or its equivalent, whether the full amount of the value of such proceeds or only part of the value of such proceeds;

(ii) the instrumentalities of a criminal offence, or the value of such instrumentalities;

(iii) subject to confiscation under any other provisions relating to powers of confiscation under the law of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, following proceedings in relation to a criminal offence, including third party confiscation, extended confiscation and confiscation without final conviction.

PUBLIC

ARTICLE 164

Obligation to assist

The United Kingdom, in respect of Gibraltar, and the Member States shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of those instrumentalities, proceeds or other property.

PUBLIC

ARTICLE 165

Requests for information on bank accounts and safe deposit boxes

1. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall, under the conditions set out in this Article, take the measures necessary to determine, in answer to a request sent by the United Kingdom, in respect of Gibraltar, or a Member State, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in the respective Member State's territory or in Gibraltar, and, if so, provide the details of the identified accounts. These details shall in particular include the name of the customer account holder and the IBAN number, and, in the case of safe deposit boxes, the name of the lessee or a unique identification number.

2. The obligation set out in paragraph 1 applies only to the extent that the information is in the possession of the bank keeping the account.

3. In addition to the requirements of Article 186, the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, shall, in the request:

(a) indicate why it considers that the requested information is likely to be of substantial value for the purposes of the criminal investigation into the offence;

(b) state on what grounds it presumes that banks in the requested Member State or in Gibraltar, if the United Kingdom, in respect of Gibraltar, is the requested actor, hold the account and specify, to the widest extent possible, which banks and accounts may be involved; and

(c) include any additional information available which may facilitate the execution of the request.

4. The United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on the Circulation of Persons that this Article will be extended to accounts held in non-bank financial institutions. Such notifications may be made subject to the principle of reciprocity.

ARTICLE 166

Requests for information on banking transactions

1. On request by another Member State or the United Kingdom, in respect of Gibraltar, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.

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2. The obligation set out in paragraph 1 applies only to the extent that the information is in the possession of the bank keeping the account.

3. In addition to the requirements of Article 186, the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, shall indicate in its request why it considers the requested information relevant for the purposes of the criminal investigation into the offence.

4. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, may make the execution of such a request dependent on the same conditions as it applies in respect of requests for search and seizure.

5. The United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on the Circulation of Persons that this Article will be extended to accounts held in non-bank financial institutions. Such notifications may be made subject to the principle of reciprocity.

ARTICLE 167

Requests for the monitoring of banking transactions

1. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall ensure that, at the request of the United Kingdom, in respect of Gibraltar, or of a Member State, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and to communicate the results of the monitoring to the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor.

PUBLIC

2. In addition to the requirements of Article 186, the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, shall indicate in its request why it considers the requested information relevant for the purposes of the criminal investigation into the offence.

3. The decision to monitor shall be taken in each individual case by the competent authorities of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, in accordance with its domestic law.

4. The practical details regarding the monitoring shall be jointly decided by the requesting and requested Member State or the United Kingdom, in respect of Gibraltar, as the requesting or requested actor, as the case may be.

5. The United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on the Circulation of Persons that this Article will be extended to accounts held in non-bank financial institutions. Such notifications may be made subject to the principle of reciprocity.

PUBLIC

ARTICLE 168

Spontaneous information

Without prejudice to its own investigations or proceedings, a Member State or the United Kingdom, in respect of Gibraltar, may without prior request forward to the United Kingdom, in respect of Gibraltar, or to a Member State information on instrumentalities, proceeds and other property liable to confiscation, where it considers that the disclosure of such information might assist the receiving Member State or the United Kingdom, in respect of Gibraltar, if it is the receiving actor, in initiating or carrying out investigations or proceedings or might lead to a request by that Member State or the United Kingdom, in respect of Gibraltar, under this Chapter.

ARTICLE 169

Obligation to take provisional measures

1. At the request of the United Kingdom, in respect of Gibraltar, or of a Member State which has instituted a criminal investigation or proceedings, or an investigation or proceedings for the purposes of confiscation, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might satisfy the request.

2. A Member State or the United Kingdom, in respect of Gibraltar, which has received a request for confiscation pursuant to Article 171 shall, if so requested, take the measures referred to in paragraph 1 in respect of any property which is the subject of the request or which might satisfy the request.

3. Where a request is received under this Article, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall take all necessary measures to comply with the request without delay and with the same speed and priority as for a similar domestic case and send confirmation without delay and by any means of producing a written record to the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State.

4. Where the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, states that immediate freezing is necessary since there are legitimate grounds to believe that the property in question will immediately be removed or destroyed, the United Kingdom, in respect of Gibraltar, if it is the requested actor, or the requested Member State shall take all necessary measures to comply with the request within 96 hours of receiving the request and send confirmation to the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, by any means of producing a written record and without delay.

5. Where the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, is unable to comply with the time limits under paragraph 4, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall immediately inform the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State and consult with the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State on the appropriate next steps.

6. Any expiration of the time limits under paragraph 4 does not extinguish the requirements placed on the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, by this Article.

PUBLIC

ARTICLE 170

Execution of provisional measures

1. After the execution of the provisional measures requested in conformity with Article 169(1), the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, shall provide spontaneously and as soon as possible to the United Kingdom, in respect of Gibraltar, if it is the requested actor, or the requested Member State all information which may question or modify the extent of those measures. The requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, shall also provide without delay all complementary information required by the United Kingdom, in respect of Gibraltar, if it is the requested actor, or the requested Member State and which is necessary for the implementation of and the follow-up to the provisional measures.

2. Before lifting any provisional measure taken pursuant to Article, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall, wherever possible, give the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State an opportunity to present its reasons in favour of continuing the measure.

PUBLIC

ARTICLE 171

Obligation to confiscate

1. If a Member State or the United Kingdom, in respect of Gibraltar, has received a request for confiscation of property situated in the respective Member State's territory or in Gibraltar, if the United Kingdom, in respect of Gibraltar, is the requested actor, it shall:

(a) enforce a confiscation order made by a court in the requesting Member State or in Gibraltar, if the United Kingdom, in respect of Gibraltar is the requesting actor, in relation to such property; or

(b) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, enforce it.

3. For the purposes of point (b) of paragraph 1, the Member States or the United Kingdom, in respect of Gibraltar, shall, whenever necessary, have competence to institute confiscation proceedings under their own domestic law.

4. Paragraph 1 also applies to confiscation consisting of a requirement to pay a sum of money corresponding to the value of proceeds, if property against which the confiscation can be enforced is located in the requested Member State's territory or in Gibraltar, if the United Kingdom, in respect of Gibraltar, is the requested actor. In such cases, when enforcing confiscation pursuant to paragraph 1, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall, if payment is not obtained, realise the claim on any property available for that purpose.

PUBLIC

5. If a request for confiscation concerns a specific item of property, the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, and the United Kingdom, in respect of Gibraltar, if it is the requested actor, or the requested Member State, may decide that the United Kingdom, in respect of Gibraltar, if it is the requested actor, or the requested Member State may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

6. The United Kingdom, in respect of Gibraltar, and the Member States shall cooperate to the widest extent possible under their domestic law with a Member State or the United Kingdom, in respect of Gibraltar, requesting the execution of measures equivalent to confiscation of property, where the request has not been issued in the framework of proceedings in criminal matters, in so far as such measures are ordered by a judicial authority of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or:

(a) other property into which the proceeds have been transformed or converted;

(b) property acquired from legitimate sources, if proceeds have been intermingled, in whole or in part, with such property, up to the assessed value of the intermingled proceeds; or

(c) income or other benefit derived from the proceeds, from property into which proceeds of crime have been transformed or converted or from property with which the proceeds of crime have been intermingled, up to the assessed value of the intermingled proceeds, in the same manner and to the same extent as proceeds.

7. The measures referred to in paragraph 5 include measures which allow the seizure, detention and forfeiture of property and assets by means of applications to civil courts.

PUBLIC

8. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall take the decision on the execution of the confiscation order without delay, and, without prejudice to paragraph 8 of this Article, no later than 45 days after receiving the request. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall send confirmation to the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State by any means of producing a written record and without delay. Unless grounds for postponement under Article 178 exist, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor shall take the concrete measures necessary to execute the confiscation order without delay and, at least, with the same speed and priority as for a similar domestic case.

9. Where the requested Member State or the United Kingdom in respect of Gibraltar if it is the requested actor, is unable to comply with the time limit under paragraph 7, it shall immediately inform the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State and consult with the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State on the appropriate next steps.

10. Any expiration of the time limit under paragraph 7 does not extinguish the requirements placed on the requested Member State or the United Kingdom in respect of Gibraltar if it is the requested actor, by this Article.

PUBLIC

ARTICLE 172

Execution of confiscation

1. The procedures for obtaining and enforcing the confiscation under Article 171 shall be governed by the domestic law of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor.

2. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision issued by a court in the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State or in so far as such conviction or judicial decision is implicitly based on them.

3. If the confiscation consists of the requirement to pay a sum of money, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall convert the amount thereof into their respective currency at the rate of exchange applicable at the time when the decision to enforce the confiscation is taken.

ARTICLE 173

Confiscated property

1. Subject to paragraphs 2 and 3 of this Article, property confiscated pursuant to Articles 171 and 172 shall be disposed of by the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, in accordance with its domestic law and administrative procedures.

PUBLIC

2. When acting on the request made by the United Kingdom, in respect of Gibraltar, or a Member State pursuant to Article 171, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall, to the extent permitted by its domestic law and if so requested, give priority consideration to returning the confiscated property to the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State so that it can give compensation to the victims of the crime or return such property to their legitimate owners.

3. Where acting on the request made by the United Kingdom, in respect of Gibraltar, or a Member State in accordance with Article 171, and after having taken into account the right of a victim to restitution or compensation of property pursuant to paragraph 2 of this Article, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall dispose of the money obtained as a result of the execution of a confiscation order as follows:

(a) if the amount is equal to or less than EUR 10 000, the amount shall accrue to the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor; or

(b) if the amount is greater than EUR 10 000, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall transfer 50 % of the amount recovered to the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State.

4. Notwithstanding paragraph 3, the United Kingdom, in respect of Gibraltar, and Member States may, on a case-by-case basis, give special consideration to concluding other such agreements or arrangements on disposal of property as they deem appropriate.

PUBLIC

ARTICLE 174

Right of enforcement and maximum amount of confiscation

1. A request for confiscation made under Article 171 does not affect the right of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, to enforce the confiscation order itself.

2. Nothing in this Chapter shall be interpreted as permitting the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Member State or the United Kingdom, in respect of Gibraltar, finds that this might occur, the United Kingdom, in respect of Gibraltar, and the Member States concerned, shall enter into consultations to avoid such an effect.

ARTICLE 175

Imprisonment in default

The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall not impose imprisonment in default or any other measure restricting the liberty of a person as a result of a request under Article 171 without the consent of the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State.

PUBLIC

ARTICLE 176

Grounds for refusal

PUBLIC

1. Cooperation under this Chapter may be refused if:

(a) the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, considers that executing the request would be contrary to the principle of ne bis in idem; or

(b) the offence to which the request relates does not constitute an offence under the domestic law of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, if committed within its jurisdiction; however, this ground for refusal applies to cooperation under Articles CONFISC.3 (Obligation to assist) to CONFISC.7 (Spontaneous information) only in so far as the assistance sought involves action which is coercive.

2. The United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on the Circulation of Persons that, on the basis of reciprocity, the condition of double criminality referred to in point (e) of paragraph 1 of this Article will not be applied provided that the offence giving rise to the request is:

(a) one of the offences listed in Article 118(5), as defined by the law of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor; and

(b) punishable by the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, by a custodial sentence or a detention order for a maximum period of at least three years.

3. Cooperation under Articles 164 to 168, in so far as the assistance sought involves action which is coercive, and under 169 and 170 may also be refused if the measures sought could not be taken under the domestic law of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, for the purposes of investigations or proceedings in a similar domestic case.

4. Where the domestic law of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, so requires, cooperation under Articles 164 to 168, in so far as the assistance sought involves action which is coercive, and under Articles 169 and 170 may also be refused if the measures sought or any other measures having similar effects would not be permitted under the domestic law of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, or, if the request is not authorised by a judicial authority acting in relation to criminal offences.

5. Cooperation under Articles 171 to 175 may also be refused if:

(a) under the domestic law of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, confiscation is not provided for in respect of the type of offence to which the request relates;

(b) without prejudice to the obligation pursuant to Article 171(3), it would be contrary to the principles of the domestic law of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, concerning the limits of confiscation in respect of the relationship between an offence and:

(i) an economic advantage that might be qualified as its proceeds; or

(ii) property that might be qualified as its instrumentalities;

(c) under the domestic law of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, confiscation may no longer be imposed or enforced because of the lapse of time;

(d) without prejudice to Article 171(5) and (6), the request does not relate to a previous conviction, or a decision of a judicial nature or a statement in such a decision that an offence or several offences have been committed, on the basis of which the confiscation has been ordered or is sought;

(e) confiscation is either not enforceable in the requesting Member State or in Gibraltar, if the United Kingdom, in respect of Gibraltar, is the requesting actor, or it is still subject to ordinary means of appeal; or

(f) the request relates to a confiscation order resulting from a decision rendered in absentia of the person against whom the order was issued and, in the opinion of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, the proceedings conducted by the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State leading to such decision did not satisfy the minimum rights of defence recognised as due to everyone against whom a criminal charge is made.

6. For the purposes of point (f) of paragraph 5 a decision is not considered to have been rendered in absentia if:

(a) it has been confirmed or pronounced after opposition by the person concerned; or

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(b) it has been rendered on appeal, provided that the appeal was lodged by the person concerned.

7. When considering, for the purposes of point (f) of paragraph 5, whether the minimum rights of defence have been satisfied, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall take into account the fact that the person concerned has deliberately sought to evade justice or the fact that that person, having had the possibility of lodging a legal remedy against the decision made in absentia, elected not to do so. The same applies where the person concerned, having been duly served with the summons to appear, elected not to do so nor to ask for adjournment.

8. The Member States or the United Kingdom, in respect of Gibraltar, shall not invoke bank secrecy as a ground to refuse any cooperation under this Chapter. Where its domestic law so requires, a requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, may require that a request for cooperation which would involve the lifting of bank secrecy be authorised by a judicial authority acting in relation to criminal offences.

9. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall not invoke the fact that:

(a) the person under investigation by, or subject to a confiscation order of, the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, is a legal person as an obstacle to affording any cooperation under this Chapter;

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(b) the natural person against whom an order of confiscation of proceeds has been issued has died or a legal person against whom an order of confiscation of proceeds has been issued has subsequently been dissolved as an obstacle to affording assistance in accordance with point (a) of Article 171(1); or

(c) the person under investigation by, or subject to a confiscation order of, the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, is mentioned in the request both as the author of the underlying criminal offence and of the offence of money laundering as an obstacle to affording any cooperation under this Chapter.

PUBLIC

ARTICLE 177

Consultation and information

Where there are substantial grounds for believing that the execution of a freezing or confiscation order would entail a real risk for the protection of fundamental rights, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall, before it decides on the execution of the freezing or confiscation order, consult the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State and may require any necessary information to be provided.

ARTICLE 178

Postponement

The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, may postpone action on a request if such action would prejudice the investigations or proceedings of that Member State or the United Kingdom, in respect of Gibraltar.

PUBLIC

ARTICLE 179

Partial or conditional granting of a request

Before refusing or postponing cooperation under this Chapter, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is requested actor, where appropriate after having consulted the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State, shall consider whether the request may be granted partially or subject to such conditions as it deems necessary.

ARTICLE 180

Notification of documents

1. The United Kingdom, in respect of Gibraltar, and the Member States shall afford each other the widest measure of mutual assistance in the serving of judicial documents to persons affected by provisional measures and confiscation.

2. Nothing in this Article is intended to interfere with:

(a) the possibility of sending judicial documents, by postal channels, directly to persons abroad; and

(b) the possibility for judicial officers, officials or other competent authorities of the Member State of origin, or the United Kingdom, in respect of Gibraltar, where it is the sending actor, to effect service of judicial documents directly through the consular authorities of that Member State or the United Kingdom, as the case may be, or through the judicial authorities, including judicial officers and officials, or other competent authorities, of the Member State of destination, or the United Kingdom, in respect of Gibraltar, if it is the receiving actor.

3. When serving judicial documents to persons abroad affected by provisional measures or confiscation orders issued in the sending Member State or in the United Kingdom, in respect of Gibraltar, if they were sent by it, that Member State or the United Kingdom, in respect of Gibraltar, shall indicate what legal remedies are available under its domestic law to such persons. The central authority of the United Kingdom, in respect of Gibraltar, if the person to whom the judicial documents are sent resides in Gibraltar, or in the Member State in which the person to whom the judicial documents are sent resides, as the case may be, shall receive a copy of these judicial documents in parallel.

PUBLIC

ARTICLE 181

Recognition of foreign decisions

1. When dealing with a request for cooperation under Articles 169 to 175 the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall recognise any decision issued by a judicial authority taken in the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State regarding rights claimed by third parties.

2. Recognition may be refused if:

(a) third parties did not have adequate opportunity to assert their rights;

(b) the decision is incompatible with a decision already taken in the requested Member State or in Gibraltar, if the United Kingdom, in respect of Gibraltar, is the requested actor, on the same matter;

(c) it is incompatible with the ordre public of the United Kingdom, in respect of Gibraltar, or the Member State, as the case may be; or

(d) the decision was taken contrary to provisions on exclusive jurisdiction provided for by the domestic law of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor.

PUBLIC

ARTICLE 182

Authorities

1. The United Kingdom, in respect of Gibraltar, and the Member States shall each notify to the Specialised Committee on the Circulation of Persons a central authority to be responsible for sending and answering requests made under this Chapter, the execution of such requests or their transmission to the authorities competent for their execution.

2. The Union may designate a Union body which may, in addition to the competent authorities of the Member States, make and, if appropriate, execute requests under this Chapter. Any such request is to be treated for the purposes of this Chapter as a request by a Member State. The Union may also designate that Union body as the central authority responsible for the purpose of sending and answering requests made under this Chapter by, or to, that body.

ARTICLE 183

Communication

1. Article 6(1) shall apply only in relation to initial requests made under this Chapter, which shall be transmitted in accordance with that Article.

2. Subject to paragraph 1, the central authorities shall communicate directly with one another.

PUBLIC

3. Subject to paragraph 1, in urgent cases, requests or communications under this Chapter may be sent directly by the judicial authorities of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, to judicial authorities of the United Kingdom, in respect of Gibraltar, if it is the requested actor or the requested Member State. In such cases, a copy shall be sent at the same time to the central authority of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor through the central authority of the United Kingdom, in respect of Gibraltar, if it is the requesting actor or the requesting Member State.

4. Where a request is made pursuant to paragraph 3 and the authority is not competent to deal with the request, it shall refer the request to the competent domestic authority and shall directly inform the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor that it has done so.

5. Subject to paragraph 1, requests or communications under Articles 164 to 168, which do not involve action which is coercive, may be directly transmitted by the competent authorities of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor to the United Kingdom, in respect of Gibraltar, if it is the requested actor or the requested Member State.

6. Draft requests or communications under this Chapter may be sent directly by the judicial authorities of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor to the judicial authorities of the United Kingdom, in respect of Gibraltar, if it is the requested actor or the requested Member State prior to a formal request to ensure that the formal request can be dealt with efficiently upon receipt and that it contains sufficient information and supporting documentation for it to meet the requirements of the law of the United Kingdom, in respect of Gibraltar, if it is the requested actor or the requested Member State.

PUBLIC

ARTICLE 184

Form of request and languages

1. All requests under this Chapter shall be made in writing. They may be transmitted electronically, or by any other means of telecommunication, provided that the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, is prepared, upon request, to produce a written record of such communication and the original at any time.

2. Requests under paragraph 1 shall be made in one of the official languages of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor or in any other language notified by or on behalf of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor in accordance with paragraph 3.

3. The United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States, may each notify the Specialised Committee on the Circulation of Persons of the language or languages which, in addition to the official language or languages of that Member State or of the United Kingdom, in respect of Gibraltar, may be used for making requests under this Chapter.

4. Requests under Article 169 for provisional measures shall be made using the using the prescribed form at Annex 16.

5. Requests under Article 171 for confiscation shall be made using the prescribed form at Annex 16.

PUBLIC

6. The Specialised Committee on the Circulation of Persons may amend the forms in Annex 16, referred to in paragraphs 4 and 5, as may be necessary.

7. The Specialised Committee on the Circulation of Persons shall adopt any modifications to the forms in Annex 16 as may be necessary to reflect changes made to Annex 46 of the Trade and Cooperation Agreement.

8. The United Kingdom, in respect of Gibraltar, and the Union, acting on behalf of any of its Member States may each notify the Specialised Committee on the Circulation of Persons that it requires the translation of any supporting documents into one of the official languages of the requested Member State or of the United Kingdom, in respect of Gibraltar, or any other language indicated in accordance with paragraph 3. In the case of requests pursuant to Article 169(4), such translation of supporting documents may be provided to the requested Member State or to the United Kingdom, in respect of Gibraltar, if it is the requested actor within 48 hours after transmitting the request, without prejudice to the time limits provided for in Article 169(4).

ARTICLE 185

Legalisation

Documents transmitted in application of this Chapter shall be exempt from all legalisation formalities.

PUBLIC

ARTICLE 186

Content of request

PUBLIC

1. Any request for cooperation under this Chapter shall specify:

(a) the authority making the request and the authority carrying out the investigations or proceedings;

(b) the object of and the reason for the request;

(c) the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;

(d) insofar as the cooperation involves action which is coercive:

(i) the text of the statutory provisions or, where that is not possible, a statement of the relevant applicable law; and

(ii) an indication that the measure sought or any other measures having similar effects could be taken in the jurisdiction of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, under its own domestic law;

(e) where necessary and in so far as possible:

(i) details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and

(ii) the property in relation to which cooperation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and

(f) any particular procedure the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, wishes to be followed.

2. A request for provisional measures under Article 169 in relation to seizure of property on which a confiscation order consisting of the requirement to pay a sum of money may be realised shall also indicate a maximum amount for which recovery is sought in that property.

3. In addition to the information referred to in paragraph 1 of this Article, any request under Article 171 shall contain:

(a) in the case of point (a) of Article 171(1):

(i) a certified true copy of the confiscation order made by the court in the requesting Member State or in Gibraltar, if the United Kingdom, in respect of Gibraltar, is the requesting actor, and a statement of the grounds on the basis of which the order was made, if they are not indicated in the order itself;

PUBLIC

(ii) an attestation by the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, that the confiscation order is enforceable and not subject to ordinary means of appeal;

(iii) information as to the extent to which the enforcement of the order is requested; and

(iv) information as to the necessity of taking any provisional measures;

(b) in the case of point (b) of Article 171(1), a statement of the facts relied upon by the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, sufficient to enable the United Kingdom, in respect of Gibraltar, if it is the requested actor, or the requested Member State to seek the order under its domestic law;

(c) where third parties have had the opportunity to claim rights, documents demonstrating that this has been the case.

ARTICLE 187

Defective requests

1. If a request does not comply with the provisions of this Chapter or the information supplied is not sufficient to enable the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, to deal with the request, that Member State or the United Kingdom, in respect of Gibraltar, may ask the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State to amend the request or to complete it with additional information.

PUBLIC

2. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, may set a time limit for the receipt of such amendments or information.

3. Pending receipt of the requested amendments or information in relation to a request under Article 171, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, may take any of the measures referred to in Articles 164 to 170.

PUBLIC

ARTICLE 188

Plurality of requests

1. Where the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, receives more than one request under Article 169 or Article 171 in respect of the same person or property, the plurality of requests shall not prevent that Member State or the United Kingdom, in respect of Gibraltar, from dealing with the requests involving the taking of provisional measures.

2. In the case of a plurality of requests under 171, the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall consider consulting the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State.

ARTICLE 189

Obligation to give reasons

The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall give reasons for any decision to refuse, postpone or make conditional any cooperation under this Chapter.

PUBLIC

ARTICLE 190

Information

1. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, shall promptly inform the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State of:

(a) the action initiated on the basis of a request under this Chapter;

(b) the final result of the action carried out on the basis of a request under this Chapter;

(c) a decision to refuse, postpone or make conditional, in whole or in part, any cooperation under this Chapter;

(d) any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly; and

(e) in the event of provisional measures taken pursuant to a request under Articles 164 to Article 169, such provisions of its domestic law as would automatically lead to the lifting of the provisional measure.

2. The requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, shall promptly inform the United Kingdom, in respect of Gibraltar, if it is the requested actor, or the requested Member State of:

(a) any review, decision or any other fact by reason of which the confiscation order ceases to be wholly or partially enforceable; and

(b) any development, factual or legal, by reason of which any action under this Chapter is no longer justified.

3. Where the United Kingdom, in respect of Gibraltar, on the basis of the same confiscation order, requests confiscation in more than one Member State, it shall inform all Member States which are affected by the enforcement of the order about the request.

4. Where a Member State, on the basis of the same confiscation order, requests confiscation in the United Kingdom, in respect of Gibraltar, and in one or more Member States, it shall inform the United Kingdom, in respect of Gibraltar, and all Member States which are affected by the enforcement of the order about the request.

PUBLIC

ARTICLE 191

Restriction of use

1. The requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, may make the execution of a request dependent on the condition that the information or evidence obtained is not, without its prior consent, to be used or transmitted by the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State for investigations or proceedings other than those specified in the request.

2. Without the prior consent of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, information or evidence provided by it under this Chapter shall not be used or transmitted by the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or the requesting Member State in investigations or proceedings other than those specified in the request.

3. Personal data communicated under this Chapter may be used by the Member State to which they have been transferred or by the United Kingdom, in respect of Gibraltar, if transferred to it:

(a) for the purposes of proceedings to which this Chapter applies;

(b) for other judicial and administrative proceedings directly related to proceedings referred to under point (a);

(c) for preventing an immediate and serious threat to public security; or

PUBLIC

(d) for any other purpose, only with the prior consent of the communicating Member State or the United Kingdom, in respect of Gibraltar, if it made the communication, unless the Member State concerned or the United Kingdom, in respect of Gibraltar, as the case may be, has obtained the consent of the data subject.

4. This Article shall also apply to personal data not communicated but obtained otherwise under this Chapter.

5. This Article does not apply to personal data obtained by the United Kingdom, in respect of Gibraltar, or a Member State under this Chapter and, in the case of the United Kingdom, originating from Gibraltar or, in the case of a Member State, originating from that Member State.

ARTICLE 192

Confidentiality

1. The requesting Member State or the United Kingdom, in respect of Gibraltar, may require that the United Kingdom, in respect of Gibraltar, if it is the requested actor, or the requested Member State keep confidential the facts and substance of the request, except to the extent necessary to execute the request. If the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor, cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor.

PUBLIC

2. The requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, shall, if not contrary to basic principles of its domestic law and if so requested, keep confidential any evidence and information provided by the United Kingdom, in respect of Gibraltar, if it is the requested actor, or the requested Member State, except to the extent that its disclosure is necessary for the investigations or proceedings described in the request.

3. Subject to the provisions of its domestic law, a Member State or the United Kingdom, in respect of Gibraltar, which has received spontaneous information under Article 168 shall comply with any requirement of confidentiality as required by the Member State which supplies the information or the United Kingdom, in respect of Gibraltar, if it is the supplier. If the receiving Member State or the United Kingdom, in respect of Gibraltar, if it is the recipient of the information, cannot comply with such a requirement, it shall promptly inform the United Kingdom, in respect of Gibraltar, if it is the one transmitting the information, or the transmitting Member State.

ARTICLE 193

Costs

The ordinary costs of complying with a request shall be borne by the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor. Where costs of a substantial or extraordinary nature are necessary to comply with a request, the requesting and requested actors shall consult in order to decide the conditions on which the request is to be executed and how the costs will be borne.

PUBLIC

ARTICLE 194

Damages

1. Where legal action on liability for damages resulting from an act or omission in relation to cooperation under this Chapter has been initiated by a person, the Member States concerned or the United Kingdom, in respect of Gibraltar, as the case may be, shall consider consulting each other, where appropriate, to determine how to apportion any sum of damages due.

2. Where the United Kingdom, in respect of Gibraltar, or a Member State has become the subject of litigation for damages, it shall endeavour to inform the other Member State(s) or the United Kingdom, in respect of Gibraltar, of such litigation if they might have an interest in the case.

ARTICLE 195

Legal remedies

1. The United Kingdom, in respect of Gibraltar, and the Member States shall ensure that persons affected by measures under Articles 169 to 172 have effective legal remedies in order to preserve their rights.

2. The substantive reasons for requested measures under Articles 169 to 172 shall not be challenged before a court in the requested Member State or in Gibraltar, if the United Kingdom, in respect of Gibraltar, is the requested actor.

PUBLIC

TITLE VI

ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING

PUBLIC

ARTICLE 196

Objective

The objective of this Title is to support and strengthen action by the United Kingdom, in respect of Gibraltar, and the Union to prevent and combat money laundering and terrorist financing.

ARTICLE 197

Principles

1. The Parties agree to support international efforts to prevent and combat money laundering and terrorist financing.

2. The Parties recognise the need to cooperate in preventing the use of their financial systems to launder the proceeds of all criminal activity, including drug trafficking and corruption, and to combat terrorist financing.

3. The Parties recognise the importance of information exchange in relation to money laundering, associated predicate offences and terrorist financing.

4. The Parties recognise the need to take into account the standards and recommendations of the Financial Action Task Force in their respective anti-money laundering and counter-terrorist financing regimes.

PUBLIC

ARTICLE 198

Non-regression from existing measures to prevent and combat money laundering and terrorist financing

1. The Parties affirm the right of each Party to set its policies and priorities in the areas covered by this Chapter, to determine the levels necessary to prevent and combat money laundering and terrorist financing it deems appropriate and to adopt and modify its law and policies in a manner consistent with each Party's international commitments, including those under this Title.

2. The United Kingdom, in respect of Gibraltar, shall not weaken or reduce its anti-money laundering and terrorist financing measures below the levels in place in the Union by the entry into force of the Agreement listed in Annex 17, including by failing to effectively enforce its law and standards.

3. The Parties shall continue to strive to increase their respective anti-money laundering and terrorist financing protection level referred to in this Title.

4. The Parties shall regularly review the need to enhance the measures to prevent and combat money laundering and terrorist financing referred to in paragraph 2, as well as every time one Party amends its legislation and affects protection in a manner incompatible with this Title.

5. In case differences in level playing field between the Parties, leading to distortions in the prevention of money laundering and terrorist financing, are arising as a result of significant divergences between the Parties in their domestic legislation, a consultation within the Specialised Committee on Circulation of Persons shall take place with a view to finding a mutually satisfactory resolution to the matter within 45 days.

6. If no mutually satisfactory resolution has been found during the consultation referred to in paragraph 5, either Party may take appropriate rebalancing measures to address the situation. Such measures shall be restricted with respect to their scope and duration to what is strictly necessary and proportionate in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement. A Party's assessment of those impacts shall be based on reliable evidence and not merely on conjecture or remote possibility.

PUBLIC

PART THREE

ECONOMY AND TRADE

TITLE I

LEVEL PLAYING FIELD FOR OPEN AND FAIR COMPETITION AND SUSTAINABLE DEVELOPMENT

CHAPTER 1

GENERAL PRINCIPLES

ARTICLE 199

Principles and objectives

1. The Parties recognise that trade and investment between the Union and the United Kingdom, in respect of Gibraltar, under the terms set out in this Agreement, require conditions that ensure a level playing field for open and fair competition between the Parties and that ensure that trade and investment take place in a manner 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 promoting the development of international trade and investment in a way that contributes to the objective of sustainable development.

PUBLIC

3. Each Party reaffirms its ambition of achieving economy-wide climate neutrality by 2050.

4. The Parties affirm their common understanding that their economic relationship, as it pertains to Gibraltar, can only deliver benefits in a mutually satisfactory way if the commitments relating to a level playing field for open and fair competition stand the test of time, by preventing distortions of trade or investment, and by contributing to sustainable development. The Parties are determined to maintain and improve their respective high standards in the areas covered by this Title.

5. The Specialised Committee on Economy and Trade may include additional areas or lay down higher standards than those referred to in paragraph 4 with a view to ensuring the maintenance of a level playing field between the Parties over time.

ARTICLE 200

Right to regulate, precautionary principle
and scientific and technical information

1. The Parties affirm the right of each Party to set its 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 law and policies in a manner consistent with each Party's international commitments, including its commitments under this Title.

2. The Parties acknowledge that, in accordance with the precautionary principle, where there are reasonable grounds for concern that there are potential threats of serious or irreversible damage to the environment or human health, the lack of full scientific certainty shall not be used as a reason for preventing a Party from adopting appropriate measures to prevent such damage.

PUBLIC

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

PUBLIC

CHAPTER 2

STATE AID CONTROL

ARTICLE 201

Substantive rules

1. This Chapter and Annex 18 apply to state aid granted by the United Kingdom, in respect of Gibraltar, to one or more economic actors that:

(a) produce, transform or supply goods and the aid has, or could have, an effect on trade or investment between the Union and Gibraltar; or

(b) are engaged in the provision of services insofar as the aid has, or could have, an effect on trade in goods or investment between the Union and Gibraltar.

2. The Union is committed to maintaining its State aid control system in accordance with Articles 93, 106, 107 and 108 of the Treaty on the Functioning of the European Union, applying it, where relevant, to any aid that has, or could have, an effect on trade in goods or investment between the Union and Gibraltar.

PUBLIC

ARTICLE 202

Exceptions

This Chapter does not apply to state aid:

(a) covered by Part IV or Annex 2 of the Agreement on Agriculture, part of Annex 1A to the WTO Agreement;

(b) related to trade in fish and fish products; or

related to the audio-visual sector.

ARTICLE 203

Transparency

1. With respect to any state aid granted or maintained within its territory, each Party shall within six months from the granting of the state aid make publicly available, on an official website or a public database, the following information:

(a) the legal basis and policy objective or purpose of the state aid;

(b) the name of the recipient of the state aid where available;

(c) the date of the grant of the state aid, the duration of the state aid and any other time limits attached to the state aid; and

(d) the amount of the state aid or the amount budgeted for the state aid.

2. For state aid in the form of tax measures, information shall be made public within one year from the date the tax declaration is due. The transparency obligations for state aid in the form of tax measures concern the same information as listed in paragraph 1, except for the information required under point (d) of that paragraph, which may be provided as a range.

3. The obligations in this Article are without prejudice to the obligations of the Parties under their respective laws concerning the freedom of information or access to documents.

ARTICLE 204

Use of state aid

Each Party shall ensure that economic actors use state aid only for the specific purpose for which it is granted.

PUBLIC

ARTICLE 205

Independent authority and cooperation

1. Each Party shall establish or maintain an operationally independent authority or body with an appropriate role in its state aid control system. That independent authority or body shall have the necessary guarantees of independence in exercising its operational functions and shall act impartially.

2. Each Party shall ensure that any intended measure to grant or alter state aid is notified to their respective independent authority or body and that such intended measure is not put into effect before the independent authority or body has authorised it.

3. A Party may exempt certain categories of state aid from the obligations laid down in the second paragraph, provided that such exemptions are transparent and based on objective criteria such as, but not limited to, the size of the beneficiaries and quantitative thresholds. In the case of the United Kingdom, in respect of Gibraltar, such exemptions shall comply with Annex 18.

4. Each Party shall ensure that its independent authority or body has the power to order recovery of any state aid granted without prior authorisation by the independent authority or body.

5. Each Party shall encourage its independent authority or body to cooperate with the other Party's independent authority or body on issues of common interest within their respective functions, including the application of Articles 201 to 204 as applicable, within the limits established by their respective legal frameworks. The Parties, or their respective independent authorities or bodies, may agree upon a separate framework regarding cooperation between those independent authorities or bodies.

PUBLIC

6. Paragraph 2 shall not apply to any intended measure to grant or alter state aid referred to in Article 201 by an Act of the Gibraltar Parliament. The United Kingdom, in respect of Gibraltar, shall ensure that any such intended measure is notified to its independent authority or body. The United Kingdom, in respect of Gibraltar, shall ensure that its independent authority or body has the power to issue an opinion on any such intended measure. The United Kingdom, in respect of Gibraltar, shall have regard to such an opinion and, where applicable, propose amendments to the Act in question for the Gibraltar Parliament to consider.

7. Paragraph 4 shall not apply to any measure to grant or alter state aid referred to in Article 201 by an Act of the Gibraltar Parliament. The United Kingdom, in respect of Gibraltar, shall ensure that its independent authority or body has the power to issue an opinion on any such measure. The United Kingdom, in respect of Gibraltar, shall have regard to such an opinion and, where applicable, propose amendments to the Act in question for the Gibraltar Parliament to consider.

ARTICLE 206

Courts and Tribunals

1. Each Party shall ensure that, in accordance with its constitutional order, its courts or tribunals are competent to:

(a) review decisions on state aid taken by a granting authority or, where relevant, the independent authority or body, in accordance with its state aid control system;

(b) review any other relevant decisions of the independent authority or body and any relevant failure to act;

PUBLIC

(c) impose remedies that are effective, in relation to point (a) or (b), including the suspension, prohibition or requirement of action by the granting authority, the award of damages, and the recovery of a state aid from its beneficiary with interest.

(d) hear claims from interested parties in respect of state aid where that interested party has standing to bring a claim in respect of a state aid under that Party's law.

2. For the purposes of this Article and Article 207, "interested party" means any natural or legal person, economic actor or association of economic actors whose interest might be affected by the granting of a state aid, in particular the beneficiary, economic actors competing with the beneficiary or relevant trade associations.

3. Point (c) of paragraph 1 shall not apply to any measure to grant or alter state aid referred to in Article 201 on the basis of an Act of the Gibraltar Parliament save that, if a court or tribunal is satisfied that such aid is incompatible with this Agreement, it may make a declaration of that incompatibility. The United Kingdom, in respect of Gibraltar, shall have regard to such a declaration and propose amendments to the Act in question for the Gibraltar Parliament to consider or take other appropriate steps, where applicable.

ARTICLE 207

Recovery

1. Each Party shall have in place an effective mechanism of recovery in respect of state aid in accordance with the following provisions, without prejudice to the power of the independent authority or body as set out in Article 205 and other remedies that exist in that Party's law.

PUBLIC

2. Without prejudice to paragraph 3, each Party shall ensure that, provided that an interested party has challenged a decision of that Party to grant state aid before a court or a tribunal within the relevant time period, in accordance with that Party's state aid control system, recovery may be ordered if a court or tribunal of that Party makes a finding of a material error of law or fact, in that:

(a) a measure constituting state aid was not treated by the granting authority as a state aid;

(b) the granting authority has not complied with the relevant state aid control system that binds it; or

(c) the granting authority has, by deciding to grant that state aid, acted outside the scope of its powers or misused those powers in accordance with this Chapter.

3. Each Party shall suspend payment of any new state aid to a beneficiary until the aid granted to that beneficiary, in respect of which an order for recovery has been made, has been fully recovered, including any recovery interests due.

4. In accordance with Articles 205(6) and (7) and 206(3), recovery of a state aid shall not be required where such aid is granted or altered on the basis of an Act of the Gibraltar Parliament.

PUBLIC

ARTICLE 208

Consultations

1. If a Party considers that state aid has been granted by the other Party or that there is clear evidence that the other Party intends to grant state aid and that the granting of the state aid has or could have a negative effect on trade in goods or investment between the Parties, it may request the other Party to provide an explanation of how this Agreement has been respected with regard to that state aid.

2. A Party may also request the information listed in Article 203 to the extent that the information has not already been made publicly available on an official website or a public database as referred to in Article 203, or to the extent that the information has not been made available in an easily and readily accessible manner.

3. The other Party shall provide the requested information in writing no later than 45 days from receipt of the request. If any requested information cannot be provided, that Party shall explain the absence of such information in its written response.

4. If, after receiving the information requested, the requesting Party still considers that the state aid granted or intended to be granted by the other Party has or could have a negative effect on trade in goods or investment between the Parties, the requesting Party may request consultations within the Specialised Committee on Economy and Trade. The request shall be in writing and shall include an explanation of the requesting Party's reasons for requesting the consultation.

PUBLIC

5. The Specialised Committee on Economy and Trade shall make every attempt to arrive at a mutually satisfactory resolution of the matter. It shall hold its first meeting within 30 days of the request for consultation.

6. The timeframes for the consultations referred to in paragraphs 3 and 5 may be extended by agreement between the Parties.

PUBLIC

ARTICLE 209

Remedial measures

1. A Party may deliver to the other Party a written request for information and consultations regarding a state aid that it considers causes, or there is a serious risk that it will cause, a significant negative effect on trade in goods or investment between the Parties. The requesting Party should provide in that request all relevant information to enable the Parties to find a mutually acceptable solution, including a description of the state aid and the concerns of the requesting Party regarding its effect on trade in goods or investment.

2. No later than 30 days from the date of delivery of the request, the requested Party shall deliver a written response providing the requested information to the requesting Party, and the Parties shall enter into consultations, which shall be deemed concluded 60 days from the date of delivery of that request, unless the Parties agree otherwise. Such consultations, and in particular all information designated as confidential and positions taken by the Parties during consultations, shall be confidential and shall be without prejudice to the rights of either Party in any further proceedings.

3. No earlier than 60 days from the date of delivery of the request referred to in paragraph 1, the requesting Party may unilaterally take appropriate remedial measures if there is evidence that a state aid of the requested Party causes, or there is a serious risk that it will cause, a significant negative effect on trade in goods or investment between the Parties.

4. No earlier than 45 days from the date of delivery of the request referred to in paragraph 1, the requesting Party shall notify the requested Party of the remedial measures that it intends to take in accordance with paragraph 3. The requesting Party shall provide all relevant information in relation to the measures that it intends to take to enable the Parties to find a mutually acceptable solution. The requesting Party may not take those remedial measures earlier than 15 days from the date of delivery of the notification of those measures to the requested Party.

5. A Party's assessment of the existence of a serious risk of a significant negative effect shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances that would create a situation in which the state aid would cause such a significant negative effect must be clearly predictable.

6. A Party's assessment of the existence of a state aid or of a significant negative effect on trade in goods or investment between the Parties caused by the state aid shall be based on reliable evidence and not merely on conjecture or remote possibility, and shall relate to identifiable goods or economic actors, including, if relevant, in the case of state aid schemes.

7. The Specialised Committee on Trade and Economy may maintain an illustrative list of what would amount to a significant negative effect on trade in goods or investment between the Parties within the meaning of this Article. This shall be without prejudice to the right of the Parties to take remedial measures.

PUBLIC

8. The remedial measures taken pursuant to paragraph 3 shall be restricted to what is strictly necessary and proportionate in order to remedy the significant negative effect caused or to address the serious risk of such an effect. Priority shall be given to measures that will least disturb the functioning of this Agreement.

9. Within five days from the date on which the remedial measures referred to in paragraph 3 enter into effect and without having prior recourse to consultations in accordance with Article 304, the notified Party may request, in accordance with Article 305(2), the establishment of an arbitration tribunal by means of a written request delivered to the requesting Party in order for the arbitration tribunal to decide whether:

(a) a remedial measure taken by the requesting Party is inconsistent with paragraphs 3 or 5;

(b) the requesting Party did not participate in the consultations after the requested Party delivered the requested information and agreed to the holding of such consultations; or

(c) there was a failure to take or notify a remedial measure in accordance with the time periods referred to in paragraph 3 or 4 respectively.

That request shall not have a suspensive effect on the remedial measures. Furthermore, the arbitration tribunal shall not assess the application by a Party of its state aid control system.

10. The arbitration tribunal established following the request referred to in paragraph 9 shall conduct its proceedings in accordance with Article 327 and deliver its final ruling within 30 days from its establishment.

PUBLIC

11. In the case of a finding against the respondent Party, the respondent Party shall, at the latest 30 days from the date of delivery of the ruling of the arbitration tribunal, deliver a notification to the complaining Party of any measure that it has taken to comply with that ruling.

12. Following a finding against the respondent Party in the procedure referred to in paragraph 10 of this Article, the complaining Party may request the arbitration tribunal, within 30 days from its ruling, to determine a level of suspension of obligations under this Agreement or a supplementing agreement not exceeding the level equivalent to the nullification or impairment caused by the application of the remedial measures, if it finds that the inconsistency of the remedial measures with paragraph 3 or 8 of this Article is significant. The request shall propose a level of suspension of obligations in accordance with the principles set out in Article 316. The complaining Party may suspend obligations under this Agreement or a supplementing agreement in accordance with the level of suspension of obligations determined by the arbitration tribunal. Such suspension shall not be applied sooner than 15 days following such ruling.

13. A Party shall not invoke the WTO Agreement or any other international agreement to preclude the other Party from taking measures pursuant to this Article, including where those measures consist in the suspension of obligations under this Agreement or a supplementing agreement.

14. For the purposes of assessing whether imposing or maintaining remedial measures on imports of the same product is restricted to what is strictly necessary or proportionate for the purposes of this Article, a Party:

(a) shall take into account countervailing measures applied or maintained in accordance with the requirements of the SCM Agreement and pursuant to a fair and transparent process; and

PUBLIC

(b) may take into account anti-dumping measures applied or maintained in accordance with the requirements of the Anti-Dumping Agreement and pursuant to a fair and transparent process.

15. If the Party against which remedial measures were taken does not submit a request pursuant to paragraph 9 within the time period laid down in that paragraph, that Party may initiate the arbitration procedure referred to in Article 305 to challenge a remedial measure on the grounds set out in paragraph 9 without having prior recourse to consultations in accordance with Article 304. An arbitration tribunal shall treat the issue as a case of urgency for the purpose of Article 310.

16. For the purposes of the proceedings under paragraph 9 or 15, in assessing whether a remedial measure is strictly necessary or proportionate, the arbitration tribunal shall pay due regard to the principles set out in paragraphs 5, 6 and 13.

ARTICLE 210

Dispute settlement

1. Subject to paragraphs 2 and 3, Title I of Part Six applies to disputes between the Parties concerning the interpretation and application of this Chapter, except for Articles 205 and 206.

2. An arbitration tribunal shall have no jurisdiction regarding:

(a) an individual state aid measure, including whether such a measure has complied with the relevant Party's state aid control system; and

PUBLIC

(b) whether the recovery remedy within the meaning of Article 207 has been correctly applied in any individual case.

3. Title I of Part Six shall apply to Article 209 in accordance with that Article and Article 327.

PUBLIC

CHAPTER 3

TAXATION

ARTICLE 211

Good governance

The Parties recognise and commit to implementing the principles of good governance in the area of taxation, in particular the global standards on tax transparency and exchange of information and fair tax competition. The Parties reiterate their support for the Organisation for Economic and Cooperation Development (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan and affirm their commitment to implementing the OECD minimum standards against BEPS. The Parties will promote good governance in tax matters, improve international cooperation in the area of taxation and facilitate the collection of tax revenues.

ARTICLE 212

Taxation standards

1. A Party shall not weaken or reduce the level of protection provided for in its legislation on 31 December 2020 below the level provided for by the standards and rules which have been agreed in the OECD at the end of the transition period, in relation to:

(a) the exchange of information, whether upon request, spontaneously or automatically, concerning financial accounts, cross-border tax rulings, country-by-country reports between tax administrations, and potential cross-border tax planning arrangements;

(b) rules on interest limitation, controlled foreign companies and hybrid mismatches.

2. A Party shall not weaken or reduce the level of protection provided for in its legislation on 31 December 2020 in respect of public country-by-country reporting by credit institutions and investment firms, other than small and non-interconnected investment firms.

ARTICLE 213

Dispute settlement

This Chapter shall not be subject to dispute settlement under Title I of Part 6.

PUBLIC

CHAPTER 4

LABOUR AND SOCIAL STANDARDS

PUBLIC

ARTICLE 214

Definition

1. For the purposes of this Chapter, "labour and social levels of protection" means the levels of protection provided overall in a Party's law and standards[1], in each of the following areas[2]:

(a) fundamental rights at work;

(b) occupational health and safety standards;

(c) fair working conditions and employment standards;

(d) information and consultation rights at company level; or

(e) restructuring of undertakings.

2. For the Union, "labour and social levels of protection" means labour and social levels of protection that are applicable to and in, and are common to, all Member States.

[1] For greater certainty, this Chapter does not apply to the Parties' law and standards relating to social security and pensions.

[2] The levels of protection are the internationally recognised core labour standards as defined in the fundamental ILO Conventions referred to in Article LPFS.19(2).

ARTICLE 215

Non-regression from levels of protection

1. The Parties affirm the right of each Party to set its policies and priorities in the areas covered by this Chapter, to determine the labour and social levels of protection it deems appropriate and to adopt or modify its law and policies in a manner consistent with each Party's international commitments, including those under this Chapter.

2. A Party shall not weaken or reduce, in a manner affecting trade or investment between the Union and the United Kingdom, in respect of Gibraltar, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce its law and standards.

3. The Parties recognise that each Party retains the right to exercise reasonable discretion and to make bona fide decisions regarding the allocation of labour enforcement resources with respect to other labour law determined to have higher priority, provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

4. The Parties shall continue to strive to increase their respective labour and social levels of protection referred to in this Chapter.

PUBLIC

ARTICLE 216

Enforcement

For the purposes of enforcement as referred to in Article 215, each Party shall have in place and maintain a system for effective domestic enforcement and, in particular, an effective system of labour inspections in accordance with its international commitments relating to working conditions and the protection of workers; ensure that administrative and judicial proceedings are available that allow public authorities and individuals with standing to bring timely actions against violations of labour law and social standards; and provide for appropriate and effective remedies, including interim relief, as well as where appropriate, apply proportionate and dissuasive sanctions in line with their domestic law. In the domestic implementation and enforcement of Article 215, each Party shall respect the role and autonomy of the social partners at a domestic level, where relevant, in line with applicable law and practice.

ARTICLE 217

Dispute settlement

1. The Parties shall make all efforts through dialogue, consultation, exchange of information and cooperation to address any disagreement on the application of this Chapter.

2. By way of derogation from Title I of Part Six, in the event of a dispute between the Parties regarding the application of this Chapter, the Parties shall have recourse exclusively to the procedures established under Articles 235 to 237.

PUBLIC

CHAPTER 5

ENVIRONMENT AND CLIMATE

ARTICLE 218

Definitions

1. For the purposes of this Chapter, "environmental and climate levels of protection" means the levels of protection provided overall in a Party's law which have the purpose of protecting the environment and climate, including the prevention of a danger to human life or health from environmental impacts and fighting against climate change, in each of the following areas:

(a) access to environmental information;

(b) public participation and access to justice in environmental matters;

(c) environmental impact assessment and strategic environmental assessment;

(d) air emissions and air quality;

(e) nature and biodiversity conservation;

(f) waste management, including the port reception facilities where relevant;

PUBLIC

(g) noise emissions;

(h) the protection and preservation of the aquatic and marine environment, including the use of port reception facilities where relevant;

(i) the prevention, reduction and elimination of risks to human health or the environment arising from the production, use, release or disposal of chemical substances; or

(j) climate change in particular emissions and removal of greenhouse gases, including the effective carbon pricing systems or equivalent measures to reduce emissions.

2. For the Union, "environmental and climate levels of protection" means environmental and climate levels of protection that are applicable to and in, and are common to, all Member States.

3. For the United Kingdom, in respect of Gibraltar, "environmental and climate levels of protection" means environmental and climate levels of protection in Gibraltar domestic law, including international commitments which have been extended to Gibraltar.

ARTICLE 219

Levels of protection

1. The Parties affirm the right of each Party to set its policies and priorities in the areas covered by this Chapter, to determine the environmental and climate levels of protection it deems appropriate, and to adopt or modify its law and policies in a manner consistent with each Party's international commitments, including those under this Chapter.

PUBLIC

2. The Parties recognise that each Party retains the right to exercise reasonable discretion and to make bona fide decisions regarding the allocation of environmental enforcement resources with respect to other environmental law and climate policies determined to have higher priorities, provided that the exercise of that discretion, and those decisions, are not inconsistent with its obligations under this Chapter.

3. The Union shall not weaken or reduce its environmental and climate levels of protection below the levels in place on 31 December 2020 including by failing to effectively enforce its environmental and climate law.

4. The United Kingdom, in respect of Gibraltar, shall uphold environmental and climate levels of protection that are equivalent to the levels in place in the Union, including by effectively enforcing environmental and climate law applicable to and in Gibraltar.

ARTICLE 220

Carbon pricing

1. Each Party shall have in place an effective system of carbon pricing or equivalent measures to reduce emissions by the date of the entry into force the agreement.

2. The United Kingdom, in respect of Gibraltar, shall ensure that the system of carbon pricing or equivalent measures to reduce emissions applying in Gibraltar shall have an equivalent scope and effectiveness as the one in place in the Union at the time of the entry into force of the agreement.

PUBLIC

3. As regards aviation, the scope of the Union system of carbon pricing shall cover all flights between the European Economic Area and Gibraltar. The scope of the United Kingdom system of carbon pricing shall cover all flights between the United Kingdom and Gibraltar.

4. The Specialised Committee on Economy and Trade shall regularly be informed about the effective implementation of paragraphs 1 to 3.

5. The United Kingdom, in respect of Gibraltar, shall review the implementation of its system of carbon pricing or equivalent measures in 2030 and regularly in the context of progression beyond its current frameworks to reduce emissions.

ARTICLE 221

Environmental and climate principles

Taking into account the fact that the Union and Gibraltar share a common biosphere in respect of cross-border pollution, the Union and the United Kingdom, in respect of Gibraltar, commit to respecting the internationally recognised environmental principles to which they have committed, such as in the Rio Declaration on Environment and Development, adopted at Rio de Janeiro on 14 June 1992 (the "1992 Rio Declaration on Environment and Development") and multilateral environmental agreements which apply in relation to the Union and to the United Kingdom which have been extended to Gibraltar, including the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 1992 (the "Convention on Biological Diversity"), in particular:

(a) the principle that environmental protection should be integrated into the making of policies, including through impact assessments;

PUBLIC

(b) the principle of preventative action to avert environmental damage;

(c) the precautionary principle referred to in Article 200;

(d) the principle that environmental damage should as a priority be rectified at source; and

(e) the polluter pays principle.

PUBLIC

ARTICLE 222

Enforcement

For the purposes of enforcement, each Party shall, in accordance with its law, ensure that:

(a) domestic authorities competent to enforce the relevant law with regard to environment and climate give due consideration to alleged violations of such law that come to their attention; those authorities shall have adequate and effective remedies available to them, including injunctive relief as well as proportionate and dissuasive sanctions, if appropriate; and

(b) domestic administrative or judicial proceedings are available to natural and legal persons with a sufficient interest to bring actions against violations of such law and to seek effective remedies, including injunctive relief, and that the proceedings are not prohibitively costly and are conducted in a fair, equitable and transparent way.

ARTICLE 223

Dispute settlement

1. The Parties shall make all efforts through dialogue, consultation, exchange of information and cooperation to address any disagreement on the application of this Chapter.

2. By way of derogation from Title I of Part Six, in the event of a dispute between the Parties regarding the application of this Chapter, the Parties shall have recourse exclusively to the procedures established under Articles 235 to 237.

PUBLIC

CHAPTER 6

OTHER INSTRUMENTS FOR TRADE AND SUSTAINABLE DEVELOPMENT

PUBLIC

ARTICLE 224

Context and objectives

1. The Parties recall Agenda 21, adopted at Rio de Janeiro on 13 June 1992, and the 1992 Rio Declaration on Environment and Development, the Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2002, the International Labour Organization (ILO) Declaration on Social Justice for a Fair Globalization, adopted at Geneva on 10 June 2008 by the International Labour Conference at its 97th Session, as amended in 2022 (the "2008 ILO Declaration on Social Justice for a Fair Globalization"), 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 paragraph 1, the objective of this Chapter 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 Chapters 4 and 5 of this Title.

ARTICLE 225

Transparency

The Parties stress the importance of ensuring transparency as a necessary element to promote public participation and of making information public within the context of this Chapter. In accordance with their laws and regulations and the provisions of this Chapter, each Party shall:

(a) ensure that any measure of general application pursuing the objectives of this Chapter is administered in a transparent manner, including by providing the public with reasonable opportunities and sufficient time to comment, and by publishing such measures;

(b) ensure that the general public is given access to relevant environmental information held by or for public authorities, as well as ensuring the active dissemination of that information to the general public by electronic means;

(c) encourage public debate with and among non-state actors as regards the development and definition of policies that may lead to the adoption of law relevant to this Chapter by its public authorities; this includes, in relation to the environment, public participation in projects, plans and programmes; and

(d) promote public awareness of its laws and standards relevant to this Chapter, as well as enforcement and compliance procedures, by taking steps to further the knowledge and understanding of the public; in relation to labour laws and standards, this includes workers, employers and their representatives.

PUBLIC

ARTICLE 226

Multilateral labour standards and agreements

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

2. In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at Geneva on 18 June 1998 by the International Labour Conference at its 86th Session, as amended in 2022, each Party commits to respecting, promoting and effectively implementing the principles concerning the fundamental rights, 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;

(d) the elimination of discrimination in respect of employment and occupation; and

(e) a safe and healthy working environment.

3. Each Party commits to effectively implementing all the ILO conventions that the United Kingdom has extended to Gibraltar and the Member States have respectively ratified.

PUBLIC

4. Each Party shall make continued and sustained efforts to ratify or extend to Gibraltar, as the case may be, the fundamental ILO conventions if they have not yet done so.

5. The Parties shall exchange information, regularly and as appropriate, on the respective situations and progress of the Member States and of the United Kingdom, in respect of Gibraltar, with regard to the ratification of ILO conventions or protocols classified as up-to-date by the ILO and of other relevant international instruments.

6. Each Party shall continue to promote, through its laws and practices, the ILO Decent Work Agenda as set out in the 2008 ILO Declaration on Social Justice for a Fair Globalization, as amended in 2022 (the "ILO Decent Work Agenda") and other relevant ILO conventions, and other international commitments, in particular:

(a) decent working conditions for all, with regard to, inter alia, wages and earnings, working hours, maternity leave and other conditions of work;

(b) health and safety at work, including the prevention of occupational injury or illness and compensation in cases of such injury or illness; and

(c) non-discrimination in respect of working conditions, including for migrant workers.

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.

PUBLIC

ARTICLE 227

Multilateral environmental agreements

1. The Parties recognise the importance of the UN Environment Assembly of the UN Environment Programme and of multilateral environmental governance and agreements as a response of the international community to global or regional environmental challenges and stress the need to enhance the mutual supportiveness between trade and environment policies, rules and measures.

2. In light of paragraph 1, each Party commits to effectively implementing the multilateral environmental agreements, protocols and amendments to which it is a party. In relation to the United Kingdom, in respect of Gibraltar, this means multilateral environmental agreements which have been extended to Gibraltar or are otherwise reflected in its laws and practices.

3. 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 party.

ARTICLE 228

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 that objective, in line with the UNFCCC, with the purpose and goals of the Paris Agreement and with other multilateral environmental agreements and multilateral instruments in the area of climate change.

PUBLIC

2. In light of paragraph 1, each Party:

(a) commits to effectively implementing the UNFCCC, and the Paris Agreement of which one principal aim is strengthening the global response to climate change and holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1,5 °C above pre-industrial levels;

(b) shall 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; and

(c) shall facilitate the removal of obstacles to trade and investment 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 the best available solutions.

ARTICLE 229

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, including by promoting sustainable trade or controlling or restricting trade in endangered species, in line with the relevant multilateral environmental agreements to which they are party and to the extent the United Kingdom has extended such agreements to Gibraltar, and the decisions adopted thereunder, notably the Convention on Biological Diversity and its protocols, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington D.C. on 3 March 1973 ("CITES").

PUBLIC

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 use of CITES as an instrument for conservation and sustainable management of biodiversity, including through the inclusion of animal and plant species in the appendices to CITES where the conservation status of that species is considered at risk because of international trade;

(c) encourage trade in products derived from a sustainable use of biological resources and contributing to the conservation of biodiversity; and

(d) continue to take measures to conserve biological diversity when it is subject to pressures linked to trade and investment, including measures to prevent the spread of invasive alien species and measures for the possible eradication of those already present.

ARTICLE 230

Trade and forests

1. The Parties recognise the importance of conservation and sustainable forest management for providing environmental functions and economic and social opportunities for present and future generations, and the role of trade in pursuing that objective.

PUBLIC

2. In light of paragraph 1 and in a manner consistent with its international obligations, each Party shall:

(a) continue to implement measures to combat illegal logging and related trade, including with respect to third countries, as appropriate, and to 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.

PUBLIC

ARTICLE 231

Trade and sustainable management
of marine biological resources and aquaculture

Each Party shall comply with international law, including adopting and maintaining their respective effective tools to combat Illegal Unreported and Unregulated (IUU) fishing, and shall adopt measures to exclude the products of IUU fishing from trade flows, and cooperate to that end.

ARTICLE 232

Trade and investment favouring sustainable development

1. The Parties confirm their commitment to enhancing 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 continue to promote:

(a) policies concerning trade and investment that support the four strategic objectives of the ILO Decent Work Agenda, consistent with the 2008 ILO Declaration on Social Justice for a Fair Globalization, including the minimum living wage, 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 the best available solutions;

(c) trade in goods and services contributing to enhanced social conditions and environmentally sound practices, including those subject to voluntary sustainability assurance schemes such as fair and ethical trade schemes and eco-labels.

3. The Parties recognise the importance of addressing specific sustainable development issues by reviewing, monitoring and assessing the potential economic, social and environmental impacts of possible actions, taking account of the views of stakeholders.

ARTICLE 233

Trade and responsible supply chain management

1. The Parties recognise the importance of responsible management of supply chains through responsible business conduct and corporate social responsibility practices and the role of trade in pursuing this objective.

PUBLIC

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

(a) encourage corporate social responsibility and 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 adopted by the OECD Council on 27 June 2000, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the ILO at its 204th session in Geneva in November 1977, 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 and responsible business conduct and shall encourage 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 that Guidance.

ARTICLE 234

Dispute settlement

1. The Parties shall make all efforts through dialogue, consultation, exchange of information and cooperation to address any disagreement on the application of this Chapter.

PUBLIC

2. By way of derogation from [Dispute settlement], in the event of a dispute between the Parties regarding the application of this Chapter, the Parties shall have recourse exclusively to the procedures established under Articles 235 and 236.

PUBLIC

CHAPTER 7

HORIZONTAL AND INSTITUTIONAL PROVISIONS

ARTICLE 235

Consultations

1. A Party may request consultations with the other Party regarding any matter arising under Article 199(3) and Chapters 4, 5, and 6 of this Title by delivering a written request to the other Party. The complaining Party shall specify in its written request the reasons and basis for the request, including identification of the measures at issue, specifying the provisions that it considers applicable. Consultations must commence promptly after a Party delivers a request for consultations and in any event not later than 30 days after the date of delivery 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. During consultations, each Party shall provide the other Party with sufficient information in its possession to allow a full examination of the matters raised. Each Party shall endeavour to ensure the participation of personnel of their competent authorities who have expertise in the matter subject to the consultations.

3. In matters relating to Article 199(3) or to the multilateral agreements or instruments referred to in Chapters 4, 5 or 6, the Parties shall take into account available information from the ILO or relevant bodies or organisations established under multilateral environmental agreements. Where relevant, the Parties shall jointly seek advice from such organisations or their bodies, or any other expert or body they deem appropriate.

4. Any resolution reached by the Parties shall be made available to the public.

PUBLIC

ARTICLE 236

Panel of experts

1. For any matter that is not satisfactorily addressed through consultations under Article 235, a Party may, after 90 days from the receipt of a request for consultations under that Article, request that a panel of experts be convened to examine that matter, by delivering a written request to the other Party. The request shall identify the measure at issue, specify and explain how that measure does not conform with the provisions of the relevant Chapter or Chapters in a manner sufficient to present the complaint clearly.

2. The panel of experts shall be composed of three panellists.

3. The Cooperation Council shall, no later than 1 year 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. Each Party shall name at least five individuals to the list to serve as panellists. The Parties shall also name at least five individuals who are not nationals of either Party and who are willing and able to serve as chairperson of a panel of experts. The Cooperation Council shall ensure that the list is kept up to date and that the number of experts is maintained at a minimum of 15 individuals.

4. The experts proposed as panellists must have specialised knowledge or expertise in labour or environmental law, other issues addressed in the relevant Chapter or Chapters, or in the resolution of disputes arising under international agreements. They must serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute. They must not be affiliated with or take instructions from either Party. They shall not be persons who are members, officials or other servants of the Union institutions, of the Government of a Member State, or of the Government of the United Kingdom or Gibraltar.

5. 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, the matter referred to in the request for the establishment of the panel of experts, and to deliver a report in accordance with this Article that makes findings on the conformity of the measure with the relevant provisions".

6. In respect of matters related to multilateral standards or agreements covered in this Title, the panel of experts should seek information from the ILO or relevant bodies established under those agreements, including any pertinent available interpretative guidance, findings or decisions adopted by the ILO and those bodies.

7. The panel of experts may request and receive written submissions or any other information from persons with relevant information or specialised knowledge.

8. The panel of experts shall make available such information to each Party, allowing them to submit their comments within 20 days of its receipt.

PUBLIC

9. The panel of experts shall issue to the Parties an interim report and a final report setting out the findings of fact, its determinations on the matter including as to whether the respondent Party has conformed with its obligations under the relevant Chapter or Chapters and the rationale behind any findings and determinations that it makes. For greater certainty, the Parties share the understanding that if the Panel makes recommendations in its report, the respondent Party does not need to follow these recommendations in ensuring conformity with this Agreement.

10. The panel of experts shall deliver to the Parties the interim report within 100 days after the date of establishment of the panel of experts. When the panel of experts considers that this deadline cannot be met, the chairperson of the panel of experts shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel of experts plans to deliver its interim report. The panel of experts shall, under no circumstances, deliver its interim report later than 125 days after the date of establishment of the panel of experts.

11. Each Party may deliver to the panel of experts a reasoned request to review particular aspects of the interim report within 25 days of its delivery. A Party may comment on the other Party's request within 15 days of the delivery of the request.

12. After considering those comments, the panel of experts shall prepare the final report. If no request to review particular aspects of the interim report are delivered within the time period referred to in paragraph 11, the interim report shall become the final report of the panel of experts.

13. The panel of experts shall deliver its final report to the Parties within 175 days of the date of establishment of the panel of experts. When the panel of experts considers that this time limit cannot be met, its chairperson shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel of experts plans to deliver its final report. The panel of experts shall, under no circumstances, deliver its final report later than 195 days after the date of establishment of the panel of experts.

PUBLIC

14. The final report shall include a discussion of any written request by the Parties on the interim report and clearly address the comments of the Parties.

15. The Parties shall make the final report available to the public within 15 days of its delivery by the panel of experts.

16. If the final report of the panel of experts determines that a Party has not conformed with its obligations under the relevant Chapter or Chapters, the Parties shall, within 90 days of the delivery of the final report, discuss appropriate measures to be implemented taking into account the report of the panel of experts.

17. The Cooperation Council shall monitor the follow-up to the report of the panel of experts.

18. When the Parties disagree on the existence of, or the consistency with, the relevant provisions of any measure taken to address the non-conformity, the complaining Party may deliver a request, which shall be in writing, to the original panel of experts to decide on the matter. The request shall identify any measure at issue and explain how that measure is not in conformity with the relevant provisions in a manner sufficient to present the complaint clearly. The panel of experts shall deliver its findings to the Parties within 45 days of the date of the delivery of the request.

19. Except as otherwise provided for in this Article, Article 305, Article 306 and Articles 318 to 323, shall apply *mutatis mutandis*.

PUBLIC

ARTICLE 237

Panel of experts for non-regression areas

1. Article 236 shall apply to disputes between the Parties concerning the interpretation and application of Chapters 4 and 5.

2. For the purposes of such disputes, in addition to the Articles listed in Articles 236, 316 and 317 shall apply *mutatis mutandis*.

3. The Parties recognise that, where the respondent Party chooses not to take any action to conform with the report of the panel of experts and with this Agreement, any remedies authorised under Article DS.17 (Temporary measures) continue to be available to the complaining Party.

PUBLIC

TITLE II

ARRANGEMENTS ON CUSTOMS, INDIRECT TAXATION AND TRADE RELATED ISSUES

PUBLIC

CHAPTER 1

GENERAL PRINCIPLES AND OBJECTIVES

ARTICLE 238

Principles and objectives

The purpose of this Title is to set up the necessary arrangements to remove all physical barriers and related procedures between Gibraltar and the Union for goods moving by land, while protecting the integrity of the Union's Single Market and the Parties' financial interests.

ARTICLE 239

Definitions

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

(a) "competent authorities of the United Kingdom, in respect of Gibraltar" means His Majesty's Customs Gibraltar or other relevant authorities in Gibraltar;

(b) "competent authorities within the Union" means customs or other relevant authorities of the Member States or of the Union;

(c) "customs clearance formalities" means all procedures, measures and controls to be carried out for the release for free circulation of the goods in accordance with Union law. It covers customs formalities, conformity with product rules, requirements and standards, prohibitions and restrictions, sanitary and phytosanitary measures as provided for in Union law, and any other formalities necessary to release the goods for free circulation in the Union;

(d) "designated customs post" means those customs posts listed in Appendix 1 of Annex 21.

PUBLIC

CHAPTER 2

CUSTOMS UNION

ARTICLE 240

Establishment of a customs union

A customs union between the Union and the United Kingdom, in respect of Gibraltar, is hereby established in accordance with the provisions set out under this Chapter.

ARTICLE 241

Customs territories

The customs territory of the customs union between the Union and the United Kingdom, in respect of Gibraltar, shall comprise:

(a) the customs territory of the Union as defined in Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council[1] (the "Union Customs Code"); and

(b) the customs territory of Gibraltar, which constitutes a customs territory separate from the customs territory of the United Kingdom.

ARTICLE 242

Free movement of goods within the customs union

1. The provisions of this Chapter shall apply to:

(a) goods produced in the customs territory of the Union or in the customs territory of Gibraltar, including those obtained wholly or in part from goods which come from countries or territories outside the customs union and are in free circulation in the Union or in Gibraltar; and

[1] Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ EU L 269, 10.10.2013, p. 1, ELI: http://data.europa.eu/eli/reg/2013/952/oj).

(b) goods which come from countries or territories outside the customs union and are in free circulation in the Union or in Gibraltar.

2. Goods coming from countries or territories outside the customs union shall be considered to be in free circulation in the Union or in Gibraltar if the customs clearance formalities have been fulfilled, and any customs duties or charges having equivalent effect which are payable have been levied, and if there has been no total or partial drawback of such duties or charges in respect of the said goods.

3. The provisions of this Chapter shall also apply to goods obtained or produced in the Union or in Gibraltar in the manufacture of which products from countries or territories outside the customs union that are not in free circulation either in the Union or in Gibraltar were used, provided the customs clearance formalities have been completed and any customs duties or charges having equivalent effect payable on such products from countries or territories outside the customs union have been levied.

4. The modalities of the proof that the goods satisfy the conditions of this Article are contained in Annex 19.

ARTICLE 243

Prohibition of customs duties

No customs duties on imports or exports or charges having equivalent effect shall be applied between the Union and Gibraltar. This prohibition shall also apply to customs duties of a fiscal nature.

PUBLIC

ARTICLE 244

Prohibition of quantitative restrictions

Quantitative restrictions on imports or exports and all measures having equivalent effect shall be prohibited between the Union and Gibraltar.

PUBLIC

ARTICLE 245

Internal taxation

1. The Union and the United Kingdom, in respect of Gibraltar, shall not impose directly or indirectly on goods of each other any taxation discriminating directly or indirectly in favour of similar domestic goods.

2. Goods moved between the territories referred to in Article 241 shall not be eligible for a refund of domestic charges which is higher than the charges which have been levied directly or indirectly.

ARTICLE 246

Removal of physical barriers

1. All physical barriers present between Gibraltar and the Union for goods moving between them by land shall be removed, without prejudice to Article 252 or to formalities required and checks and controls that may be carried out by the Parties to ensure the correct application of this Title.

2. Until the entry into force of the decision referred to in Article 247(1), customs clearance formalities, export formalities, and Union levy and duty collection procedures provided for in this Title that refer to the United Kingdom, in respect of Gibraltar, shall be carried out, as provided for in Article 247(3).

PUBLIC

ARTICLE 247

Imports into and exports from Gibraltar

1. The provisions of Union law listed in Annex 20 shall apply to the United Kingdom, in respect of Gibraltar, and in Gibraltar, provided that the Cooperation Council adopts a decision:

(a) specifying the date as from which the provisions of Union law listed in Annex 20 apply to the United Kingdom, in respect of Gibraltar, and in Gibraltar; and

(b) declaring that border control posts and customs offices have been established in the port and airport and that they operate and are controlled in accordance with modalities and procedures defined in that decision and that competent authorities within the Union have been designated.

2. When adopting the decision referred to in paragraph 1, the Cooperation Council may amend the list of provisions of Union law in Annex 20.

3. Until the entry into force of the decision referred to in paragraph 1, and without prejudice to paragraph 4, goods other than those carried by travellers in their personal luggage in accordance with Annex 23 shall be brought into Gibraltar and be exported from Gibraltar only by land and in accordance with the rules laid down in Annex 19, 21, 22 and 24.

4. By derogation from paragraph 3:

(a) Union goods may also be brought into Gibraltar by sea in accordance with the rules laid down in Article 4 of Annex 19, Article 7 of Annex 21, and in Annexes 22 and 24;

(b) goods may also be moved by sea from Gibraltar to third countries in accordance with the rules laid down in Article 5 of Annex 19, Articles 7 and 8 of Annex 21 and in Annexes 22 and 24.

5. Until the entry into force of the decision referred to in paragraph 1, Gibraltar shall be regarded as a third territory for Union customs purposes.

6. The decision referred to in paragraph 1 shall lay down arrangements for joint actions and controls, as well as customs cooperation and administrative cooperation between the competent authorities of the United Kingdom, in respect of Gibraltar, and the competent authorities within the Union as well as any other rules or procedures necessary to ensure the correct application of the provisions of Union law listed in Annex 20 to the United Kingdom, in respect of Gibraltar, and in Gibraltar, the correct application of this Title, as well as of the correct application of that decision.

7. When adopting the decision referred to in paragraph 1, the Cooperation Council shall also consider the manner in which any border formalities and any relevant border controls and checks at the border posts or customs offices in Gibraltar, including the performance of risk analysis and post release controls, shall be carried out in order to protect the proper functioning of the Union's Single Market.

PUBLIC

ARTICLE 248

Indirect taxation

1. Until the entry into force of the decision referred to in Article 247(1), paragraphs 2 to 4 of this Article shall apply.

2. Goods produced in or imported into Gibraltar shall be liable to a transaction tax.

3. Goods liable to excise duties under Union law imported into or produced in Gibraltar shall also be liable to an excise duty in Gibraltar.

4. The transaction tax and the excise duty shall be levied in accordance with the provisions laid down in Annex 24.

5. An independent consultative body established by the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain established on […] shall:

(a) advise at any time, at the request of the Parties, based on its ongoing assessment of the relevant market conditions in Gibraltar and the contiguous frontier zone whether the conditions under points (a) to (c) of Article 249(1) are met; and

(b) assess and advise annually the impact of the transaction tax rates, including reduced and super reduced rates, and excise duty rates applied in Gibraltar on the level of competition and any significant actual distortions in trade between Gibraltar and the contiguous frontier zone.

PUBLIC

6. Should any distortion within the meaning of paragraph 4 be established by the independent consultative body, the United Kingdom, in respect of Gibraltar, shall adjust the indirect taxation rates to be applied in Gibraltar to a level deemed appropriate according to the recommendations of the independent consultative body to avoid such distortions and within the limits set out in Articles 2 and 6 of Annex 24.

PUBLIC

ARTICLE 249

Safeguard procedure

1. The Union may use the safeguard procedure provided for in this Article should the United Kingdom, in respect of Gibraltar, not comply with its obligation under Article 248(5) in relation to Article 248(4)(a) and if considered appropriate by the Union, if the following conditions are met:

(a) significant distortions in trade between Gibraltar and the Union are occurring in respect of the good or category of goods concerned;

(b) the distortions referred to in point (a) are linked to differences in the levels of transaction tax and excise duties charged on that good by the United Kingdom, in respect of Gibraltar, compared to the rates of VAT and excise duties charged by the Kingdom of Spain on the same good or category of goods;

(c) the distortions referred to in point (a) have existed for a period of at least 30 days; and

(d) the Union has objective, compelling and verifiable information to support a finding that the conditions set out in points (a) to (c) are met.

2. The Union may use the safeguard procedure of this Article should the United Kingdom in respect of Gibraltar not comply with its obligation under Article 248(5) in relation to Article 248(4)(b) and if considered appropriate by the Union.

3. The Union shall notify the United Kingdom, in respect of Gibraltar, in full of the information referred to in point (d) of paragraph 1 and shall enter into immediate consultations with the United Kingdom, in respect of Gibraltar, with a view to reaching a mutually acceptable solution. The notification must provide details of the relevant recommendation of the independent consultative body, the specific good or category of goods in respect of which the finding has been made, including, where relevant, the brand or make and the model.

4. If, after 10 working days of the consultations commencing, a mutually acceptable solution is not reached, the Union may, for a period not longer than 30 days, levy the VAT and excise applicable to the specific good or category of goods identified in the notification when opening the transit procedure for any such goods in accordance with Annexes 19 and 21 when they are destined for Gibraltar. The rate of VAT and excise applied shall be that applicable in the Member State of the relevant designated customs post.

5. Subject to paragraph 6, the 30-day period referred to in paragraph 4 may be extended by a further period of 30 days if the conditions set out in paragraphs 1 and 2 persist.

6. The Union shall notify the United Kingdom, in respect of Gibraltar, that it intends to extend the 30-day period referred to in paragraph 4, pursuant to paragraph 5, not less than 4 working days before such extension takes effect. The information referred to in point (d) of paragraph 1 supporting a finding that the conditions set out in points (a) to (c) of paragraph 1 continue to be met or that the situation referred to in paragraph 1 persists, shall be provided in full to the United Kingdom, in respect of Gibraltar, with that notification.

PUBLIC

7. The processes set out in paragraphs 5 and 6 may be repeated until such time as the conditions set out in paragraph 1 are no longer met, an alternative mutually agreed solution has been reached, or until the conclusion of the arbitration process referred to in paragraph 8.

8. If the United Kingdom, in respect of Gibraltar, initiates the arbitration procedure referred to in Article 305 to challenge any act by the Union under this Article, the arbitration tribunal shall treat the issue as a case of urgency for the purposes of Article 310.

9. During any period that the Union levies VAT and excise on goods pursuant to this Article, the provisions of the Agreement requiring the United Kingdom, in respect of Gibraltar, to levy transaction tax and excise duties on those goods shall not apply.

10. Article 6(1) shall not apply to communications made under this Article.

11. Amounts of VAT and excise duties collected by the Member State concerned shall be kept by that Member State.

ARTICLE 250

Cooperation and mutual administrative assistance

1. Until the entry into force of the decision referred to in Article 247(1), paragraphs 2 to 8 of this Article shall apply.

PUBLIC

2. The Parties shall cooperate in the area of customs and indirect taxation, including by:

(a) communicating and exchanging information in a rapid and secure way to ensure the proper application of customs and tax legislation and to prevent and combat customs and tax fraud, smuggling, in particular of products subject to excise duties or any other indirect taxes, such as tobacco products, drug trafficking, trafficking in firearms and explosives precursors, including cash movements and money laundering and terrorist financing in relation thereto and illegal waste trafficking. Such exchanges may take place in an automated and systematic way and may include import and export declaration data on trade between the Parties;

(b) coordinating customs and tax controls;

(c) cooperation relating to the movement of goods that are subject to customs and tax controls; and

(d) adopting other measures to facilitate and promote secure and licit trade, including with respect to authorised economic operators and collaborating on special forms of cooperation provided for by Union law or agreed between the Parties.

3. The competent authorities within the Union and the competent authorities of the United Kingdom, in respect of Gibraltar, shall provide each other with mutual administrative assistance in customs matters in accordance with Protocol on mutual administrative assistance in customs matters.

PUBLIC

4. The competent authorities within the Union and the competent authorities of the United Kingdom, in respect of Gibraltar, shall cooperate with each other to ensure compliance with legislation relating to VAT, transaction tax and excise duties 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 excise duty and on mutual assistance for the recovery of claims relating to taxes and duties.

5. Any exchange of information between the competent authorities within the Union and the competent authorities of the United Kingdom, in respect of Gibraltar, in accordance with this Chapter shall be subject to the requirements of confidentiality and protection of information set out in Article PCUST.12 of the Protocol on mutual administrative assistance in customs matters, *mutatis mutandis*, as well as to any confidentiality requirements set out in the law of the Union and of the United Kingdom, in respect of Gibraltar.

6. The competent authorities within the Union and the competent authorities of the United Kingdom, in respect of Gibraltar, may cooperate and exchange information in the area of non-food product safety and compliance.

7. The Union and the United Kingdom, in respect of Gibraltar, shall notify their respective competent authorities to carry out the cooperation and mutual administrative assistance on customs and indirect taxes provided for in this Article.

8. Article 6(1) shall only apply to exchanges of periodic complied data and information under this Article.

PUBLIC

ARTICLE 251

Access to IT systems

1. For the purposes of the application of Articles 242, 245, 247 and 248, the competent authorities of the United Kingdom, in respect of Gibraltar, shall have access to the European transit and proof of Union status IT system or to the specific transit system of Annexes 19 and 21 through the IT system of the Kingdom of Spain.

2. The competent authorities within the Union shall have real time and continuous access to any relevant IT systems used by the competent authorities of the United Kingdom, in respect of Gibraltar, for the application of this Title.

3. Administrative arrangements between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain shall set out the practical modalities for the application of paragraphs 1 and 2.

ARTICLE 252

Exceptions and safeguards

1. The provisions of Article 244 shall not preclude the application of prohibitions or restrictions on the import or export of goods, or to goods in transit, justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Union and the United Kingdom, in respect of Gibraltar.

PUBLIC

2. Without prejudice to Article 334, the Union or the United Kingdom, in respect of Gibraltar, may suspend the application of this Agreement or take the measures foreseen in paragraph 3 in case of:

(a) insufficient or defective application of the provisions of this Title, or of paragraph 1 of Article 19 insofar as the latter relates to acts of Union law made applicable to the United Kingdom, in respect of Gibraltar, and in Gibraltar by the decision referred to in Article 247(1);

(b) lack of cooperation by the competent authorities within the Union or by the competent authorities of the United Kingdom, in respect of Gibraltar, to address irregularities, fraud or diversion of trade, including as regards the full access of the competent authorities within the Union in accordance with Article 251;

(c) objective, compelling and verifiable information that systematic and large-scale breaches or circumventions of customs legislation have been committed; or

(d) errors, maladministration or abuses committed by the Union or by the United Kingdom, in respect of Gibraltar.

3. In the cases referred to in paragraph 2:

(a) the Union may increase the collection cost referred to in Article 3 of Annex 21 or suspend the reimbursement of the duties collected; and

PUBLIC

(b) the Union may levy the VAT and where relevant excise duties applicable in the Member State of the designated customs post when opening the transit procedure for the goods destined for Gibraltar in accordance with Annexes 19 and 21.

4. If the Union or the United Kingdom, in respect of Gibraltar, intends to act pursuant to paragraph 2, it shall notify the Cooperation Council and be ready to enter into consultations upon request within the Cooperation Council with a view to reaching a mutually acceptable solution. If the Union and the United Kingdom, in respect of Gibraltar, fail to agree on a mutually acceptable solution within three months after the date of notification, the Union or the United Kingdom, in respect of Gibraltar, may decide to act pursuant to paragraph 2 unilaterally.

5. In the case a Party intends to take a measure pursuant to paragraph 4, the following modalities shall apply:

(a) that Party shall notify the other Party about its decision specifying the reason to take the measure and the period of application of the unilateral measure, which shall be no longer than three months;

(b) the period for the application of the unilateral measure may be renewed following the same procedure, should the conditions under paragraph 2 persist at the expiry of the period set out in the notice referred to in sub-paragraph (a);

(c) any unilateral measure under this Article shall be the subject of regular consultations in the Cooperation Council from the date of application of the measure, with a view to ending the measure concerned before the expiry of the period set out in the notice referred to in sub-paragraph (a) in the event that the Party applying the measure decides the measure is no longer necessary; and

PUBLIC

(d) The Parties may at any time request the Cooperation Council to review any measure taken under this Article.

PUBLIC

ARTICLE 253

Ceuta and Melilla

The import of goods from Ceuta and Melilla into Gibraltar shall be subject to the same treatment as that afforded by Union law to goods imported from Ceuta and Melilla into the Union.

ARTICLE 254

Specialised Committee on Economy and Trade

1. The Specialised Committee on Economy and Trade shall have the power to:

(a) adopt appropriate measures to implement and make effective the provisions of Article 250;

(b) lay down the provisions needed for the application of Article 251;

(c) adopt amendments to the Annexes, appendices and protocols to this Title; and

(d) lay down any other arrangements necessary for the proper implementation of this Title.

2. The Specialised Committee on Trade and Economy shall regularly discuss the implementation of this Title.

PUBLIC

CHAPTER 3

GOODS PRODUCED OR PLACED ON THE MARKET IN GIBRALTAR

ARTICLE 255

Definitions

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

(a) "food" means any substance or product, including drinks, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans. "Food" shall not include feed, live animals unless they are prepared for placing on the market for human consumption, plants prior to harvesting, medicinal products, cosmetics, tobacco and tobacco products, narcotic or psychotropic substances, residues, contaminants and medical devices;

(b) "GHA" means the Gibraltar Health Authority;

(c) "label" means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, the packaging of a food or the box in which it is contained, and which cannot be easily removed or faded;

(d) "prepacked" means prepared for presentation of any single item as such to the final consumer and to catering operators, consisting of the packaging into which the retail goods are put before being offered for sale, whether such packaging encloses the retail goods completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging. "Prepacked food" shall not include foods packed on the sales premises at the consumer's request or prepacked for direct sale; and

(e) "retail" means the handling or processing of food and its storage at the point of sale or delivery to the final consumer, which includes distribution terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centres and wholesale outlets.

ARTICLE 256

General requirements

1. The United Kingdom, in respect of Gibraltar, shall have in place and effectively apply legislation ensuring that goods may be produced or placed on the market in Gibraltar only if they comply with the relevant rules of Union law governing the production or placing on the market of those goods.

2. Without prejudice to paragraph 1, goods lawfully placed on the market in any Member State shall be presumed to be compliant with any current or future rules applicable to goods to be placed on the market in Gibraltar.

PUBLIC

3. The rules referred to in paragraph 1 shall not apply to:

(a) goods produced in Gibraltar exclusively for export outside Gibraltar or the Union without being first placed on the Gibraltar or Union markets;

(b) food produced in Gibraltar or prepared, processed or repacked by retail establishments in Gibraltar and placed on the market in Gibraltar for local consumption[1]; and

(c) food imported into Gibraltar, as regards their transport, storage and distribution after entry into Gibraltar.

Where food referred to in subparagraph (b), is prepacked, the individual packaging must bear a label which clearly states the words "Not for EU".

In order to ensure that food referred to in subparagraphs (b) and (c) cannot be subsequently moved to a Member State or placed on the market in the Union, the competent authorities of the United Kingdom, in respect of Gibraltar, shall carry out official controls and surveillance measures to ensure compliance with the requirements of this paragraph and shall ensure that such food is only intended for retail sale and local consumption and that economic operators comply with the labelling requirement provided for in this Article.

[1] For greater certainty, spirit drinks produced or placed on the market in Gibraltar are excluded from this provision and must fully comply with the relevant Union rules.

4. Notwithstanding paragraph 1, the United Kingdom, in respect of Gibraltar, may allow medicinal products for human use as defined in subparagraph (2) of Article 1 of Directive 2001/83/EC of the European Parliament and of the Council[1] to be placed on the market in Gibraltar provided that all of the following conditions are fulfilled:

(a) the competent authorities of the United Kingdom have authorised the placing on the market in the United Kingdom of the medicinal product in accordance with the law of the United Kingdom and under the terms of the authorisation granted by them;

(b) the medicinal products concerned not bear the EU unique identifier; but bear an individual label that shall state the words "UK only" which shall be attached to the packaging of the medicinal product in a conspicuous place in such a way that it is easily visible, clearly legible, and indelible and shall not in any way be hidden, obscured, detracted from, or interrupted by any other written or pictorial matter or any other intervening material; and

(c) the United Kingdom, in respect of Gibraltar, has taken effective monitoring and enforcement measures carried out by means of audits and inspections in order to ensure that medicinal products as referred to in this paragraph[2] may not be moved from Gibraltar to the Union or be placed on the market in a Member State and that economic operators comply with the labelling requirement provided for in this Article.

[1] Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ EC L 311, 28.11.2001, p. 67, ELI: http://data.europa.eu/eli/dir/2001/83/oj)

[2] With the exception of licensed prescription medicines accompanied by a prescription by a GHA approved professional in a quantity not exceeding 90-day long treatment.

5. Notwithstanding paragraph 1, the United Kingdom, in respect of Gibraltar, may allow the import into Gibraltar, as laid down in Article 247(4), of medical devices, accessories for medical devices and in vitro diagnostic medical devices as defined in Article 2(1) and (2) of Regulation (EU) 2017/745 of the European Parliament and of the Council[1] and Article 2(2) and 2(4) of Regulation (EU) 2017/746 of the European Parliament and of the Council[2] (hereafter referred to as "devices"), provided that the following conditions are fulfilled:

(a) the devices may be lawfully placed on the market in the United Kingdom;

(b) the devices are procured and imported by or for entities placed under the direct responsibility of the GHA[3];

(c) the sole end-users of the devices are entities under the direct responsibility of the GHA and professionals employed by the GHA;

PUBLIC

1 Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ EU L 117, 5.5.2017, p. 1, ELI: http://data.europa.eu/eli/reg/2017/745/oj).

2 Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ EU L 117, 5.5.2017, p. 176, ELI: http://data.europa.eu/eli/reg/2017/746/oj).

3 By the date of entry into force of this Agreement, and subsequently each time there is a change to the entities concerned, the United Kingdom, in respect of Gibraltar, shall notify the Committee on Economy and Trade of the entities falling within the scope of point (b) of paragraph 5.

(d) where the product does not bear a "CE" marking, a clearly visible, legible and indelible marking or sticker shall be applied to each consignment of devices covered by paragraph 5 at the point of first handling in Gibraltar following unloading from the means of transport. This marking or sticker should be placed on the outermost packaging of the consignment or shipping box, stating the words "Gibraltar (GHA) only". This shall be attached to the outermost packaging of the product in a conspicuous place in such a way that it is easily visible, clearly legible, and indelible; it shall not in any way be hidden, obscured, detracted from, or interrupted by any other written or pictorial matter or any other intervening material.

For the purposes of this subparagraph, "outermost packaging" means the first level of packaging visible upon receipt of the consignment after unloading, excluding any inner packs, cartons or individual product units contained therein; and

(e) the United Kingdom, in respect of Gibraltar, has taken effective monitoring and enforcement measures carried out by means of audits and inspections in order to ensure that devices as referred to in this paragraph[1] may not be moved from Gibraltar to the Union or be placed on the market in a Member State and that economic operators comply with the labelling requirements provided for in this Article.

[1] With the exception of devices and accessories for such devices accompanied by a prescription or certificate by a GHA approved professional in quantity not exceeding a 90-day long treatment.

6. Any device imported under paragraph 5, which does not bear a "CE" marking, may only leave the premises of entities under the direct responsibility of the GHA if this is necessary for reasons of patient health, in the opinion of professionals employed by the GHA. For any such devices leaving premises of entities under the direct responsibility of the GHA, a clearly visible, legible and indelible marking or sticker stating the words "Gibraltar (GHA) only" shall be applied to the immediate outer packaging of the device, or to the device itself if it is not packaged when leaving the premises. This shall be attached to the packaging of the product in a conspicuous place in such a way that it is easily visible, clearly legible, and indelible; it shall not in any way be hidden, obscured, detracted from, or interrupted by any other written or pictorial matter or any other intervening material.

This requirement shall not apply to implantable devices or where it is not possible to apply such a marking or sticker without impairing its proper functioning, given the size or nature of the device.

7. Before issuing any new authorisation licence relating to the production or placing on the market of goods in Gibraltar, the United Kingdom, in respect of Gibraltar, shall inform the Union via the Specialised Committee on Economy and Trade.

ARTICLE 257

Monitoring of compliance and cooperation on market surveillance

1. The United Kingdom, in respect of Gibraltar, shall:

(a) establish and ensure the effective operation of market surveillance authorities which will carry out market surveillance activities to ensure compliance with Article 256(1) and 256(3);

(b) ensure the separation of market surveillance functions from conformity assessment functions; and

(c) ensure the impartiality of market surveillance authorities in the performance of control or supervision of economic operators.

2. When a Member State's market surveillance authority has found that goods produced or placed on the market in Gibraltar are not in compliance with the relevant rules of Union law governing the production or placing on the market of these goods in the Union and has informed the competent authorities of the United Kingdom, in respect of Gibraltar, thereof, and provided the reasons for its finding, the latter authorities shall without delay take all appropriate and necessary enforcement measures. Article 6(1) shall not apply to exchanges of information under this paragraph.

3. When the competent authorities of the United Kingdom, in respect of Gibraltar, have found that goods imported from a Member State and placed on the market in Gibraltar are not in compliance with the legislation referred to in Article 256(1) and where bringing such non-compliance to an end requires measures to be taken within the jurisdiction of a Member State, those authorities may send a reasoned request to the market surveillance authorities of that Member State to investigate whether those goods are in compliance with the rules that would apply if those goods were placed on the market in the Union and, if it is found that the goods are not in compliance, to take appropriate corrective measures.

PUBLIC

4. Without prejudice to the relevant provisions on mutual administrative assistance in customs matters, representatives of the competent authorities within the Union shall verify in accordance with Article 265, as provided for below, whether goods produced or placed on the market in Gibraltar comply with relevant rules of Union law applicable to those goods in the Union.

For the purposes of the verification referred to in the first sub-paragraph, the representatives of the competent authorities within the Union may request the authorities of the United Kingdom, in respect of Gibraltar, to carry out certain actions and measures during joint visits. The competent authorities of the United Kingdom, in respect of Gibraltar, shall carry out those measures expeditiously.

The measures referred to in the second sub-paragraph may include the following:

(a) the provision, by the end of January and July of each year, to the representatives of the competent authorities within the Union of the list of licensed economic operators and of goods produced or placed on the market provided by the competent authorities of the United Kingdom, in respect of Gibraltar, and verification of the accuracy of that list through the production of the relevant business licences;

(b) the verification that the actual production of goods produced or placed on the market in Gibraltar is carried out by the producer in accordance with the relevant rules of Union law applicable to the production of these goods in the Union and in the Member State in the market of which the goods are intended to be placed; and

PUBLIC

(c) the verification that goods placed on the market in Gibraltar are compliant with the relevant rules of Union law applicable for the production and placing on the market of those goods in the Union.

5. In order to allow the competent authorities within the Union to decide, on the basis of risk-based market surveillance criteria, whether and to what extent joint verification visits are necessary, the competent authorities of the United Kingdom, in respect of Gibraltar, shall provide the competent authorities within the Union with a list of the existing producers of goods in Gibraltar by the end of January and of July of each year following the entry into force of this Agreement. That list shall indicate:

(a) any new licensed producer, including a description of the products produced by that producer;

(b) the quantities produced during the previous period of six months per producer and per good; and

(c) the volume of sales per producer and per good by place of destination (either Gibraltar or the place where the goods were exported).

The Specialised Committee on Economy and Trade may adopt a decision amending the content of such list.

6. The Parties recognise the importance of cooperation on market surveillance, safety and compliance of products for the facilitation of trade and for the protection of consumers and other users and of building mutual trust based on timely shared information and shall take appropriate action accordingly.

PUBLIC

CHAPTER 4

TOBACCO

ARTICLE 258

Specific measures on monitoring and tracking of tobacco

The United Kingdom, in respect of Gibraltar, shall, in accordance with the provisions of the Protocol on the traceability, cooperation to fight smuggling of tobacco and additional measures related to tobacco products:

(a) set up a tobacco traceability system that is equivalent to the Union system and the relevant Union law;

(b) adopt additional measures as regards picture warnings, tobacco for oral use and cross border distance sales for tobacco products;

(c) share traceability information on the movements of tobacco products in Gibraltar with the competent authorities within the Union, upon request;

(d) establish monitoring mechanisms to exchange information with the competent authorities within the Union concerning raw, unmanufactured tobacco and manufactured tobacco products that are entered, imported or sold in Gibraltar or exited or exported from Gibraltar; and

PUBLIC

(e) cooperate, including by exchanging information with the competent authorities within the Union to fight tobacco smuggling, including to identify persons that may be found directly or indirectly responsible for said acts.

Article 6(1) shall not apply to exchanges of information under points (d) and (e).

PUBLIC

CHAPTER 5

PROVISIONS APPLICABLE TO CERTAIN CATEGORIES OF GOODS

ARTICLE 259

Definitions

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

(a) "civilian component" means civilian persons who are in the employ of, or contracted by, the Government of the United Kingdom and who are not persons resident in Gibraltar or in the Union, with the exception of persons who have the right to reside in the United Kingdom or the Common Travel Area;

(b) "non-resident United Kingdom Forces" means persons serving in the United Kingdom Forces, either as regulars or reserves, who are citizens of the United Kingdom, Commonwealth citizens, citizens of Ireland or have the right to reside in the United Kingdom or the Common Travel Area and who are not persons resident in Gibraltar; and

(c) "visiting third country forces" means persons serving or who are in the employ of, or contracted by, the armed services of a NATO member or of selected partners who are not persons resident in the Union, or in Gibraltar, and who are due to arrive in Gibraltar on the invitation of the United Kingdom.

PUBLIC

ARTICLE 260

Rules applicable to certain categories of goods

1. With the exception of the documents referred to in paragraph 4 and goods transferred for commercial purposes, the competent authorities within the Union and the competent authorities of the United Kingdom, in respect of goods to be transferred to and from Gibraltar exclusively for the official use of the Ministry of Defence of the United Kingdom or of visiting third country forces, shall ensure that customs controls take place only at a designated customs post, during the fixed opening hours. The competent authorities within the Union shall ensure that customs controls take place as soon as reasonably practicable. Union law shall apply to the transfer of such goods from Gibraltar to the customs territory of the Union.

2. The transfer shall be carried out in accordance with the relevant provisions for goods of this Title with the exception of the collection of customs duties or indirect taxes and the application of Article 265.

3. The temporary admission and the re-exportation of service vehicles of non-resident United Kingdom Forces or the civilian component under their own power or private motor vehicles for their personal use shall be allowed free of customs duties and indirect taxation on presentation of a triptyque in the form included in the administrative arrangements referred to in paragraph 7.

4. Official documents under official seal shall be exempt from the application of this Title. Couriers, whatever their status, carrying these documents must be in possession of an individual movement order as referred to in the second indent of Article 38(2). This movement order shall show the number of dispatches carried and certify that they contain only official documents.

5. Special arrangements shall be made so that fuel, oil and lubricant for use in service vehicles, aircraft and vessels of non-resident United Kingdom Forces or the civilian component, may be delivered free of all duties and taxes.

6. Goods covered by this Article are not considered to be in free circulation in Gibraltar but in a form of temporary admission under the control of the relevant authorities. Goods covered by this Article may not be released for free circulation in the customs territory of the Union. Where these goods are placed on the market in Gibraltar, Title II shall apply.

7. Administrative arrangements between the Kingdom of Spain and the United Kingdom shall set out the practical modalities for the application of this Chapter.

PUBLIC

ARTICLE 261

Military technology and equipment

1. Transfers of items included in the Common Military List of the European Union[1] as well as Category A, B and C firearms within the meaning of Regulation (EU) No 258/2012 of the European Parliament and of the Council[2], and Regulation (EU) 2025/41 of the European Parliament and of the Council[3], when destined for the armed forces, the police, or the public authorities of the United Kingdom in Gibraltar shall be subject to the provisions of this Title as well as to rules of Spanish law on export controls of defence and dual use material. The Kingdom of Spain shall impose an authorisation requirement on the transfers of these items.

2. The applications for the authorisations referred to in paragraph 1 shall include:

(a) applications for licenses for physical exports, including those for the purpose of licensed production of military equipment in third countries;

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1 COMMON MILITARY LIST OF THE EUROPEAN UNION adopted by the Council on 17 February 2020 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment) (updating and replacing the Common Military List of the European Union adopted by the Council on 18 February 2019 (1)) (CFSP) (2020/C 85/01).

2 Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition (OJ EU L 94, 30.3.2012, p. 1, ELI: http://data.europa.eu/eli/reg/2012/258/oj).

3 Regulation (EU) 2025/41 of the European Parliament and of the Council of 19 December 2024 on import, export and transit measures for firearms, essential components and ammunition, implementing Article 10 of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol) (OJ EU L, 2025/41, 22.1.2025, ELI: http://data.europa.eu/eli/reg/2025/41/oj).

(b) applications for licenses for imports into the customs territory of the Union;

(c) applications for brokering licenses;

(d) applications for "transit" or "transhipment" licenses; and

(e) applications for licenses for any intangible transfers of software and technology, by means such as electronic media, fax or telephone.

3. The Kingdom of Spain shall assess the license applications submitted for transfers of items on the Common Military List of the European Union on a case-by-case basis against the criteria established by Council Common Position 2008/944/CFSP[1] as amended by Council Decision (CFSP) 2025/779[2] defining common rules governing the control of exports of military technology and equipment.

PUBLIC

[1] Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ EC L 335, 13.12.2008, p. 99, ELI: http://data.europa.eu/eli/compos/2008/944/oj).

[2] Council Decision (CFSP) 2025/779 of 14 April 2025 amending Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment (OJ EU L, 2025/779, 15.4.2025, ELI: http://data.europa.eu/eli/dec/2025/779/oj).

ARTICLE 262

Dual use goods and technologies

1. Transfers of items included in Annex I of Regulation (EU) 2021/821 of the European Parliament and of the Council[1] shall be subject to the provisions of this Title as well as to relevant rules of Union and Spanish law on export controls of defence and dual use material. The Kingdom of Spain shall impose an authorisation requirement on the transfers of dual-use items listed in Annex I of this Regulation.

2. The Kingdom of Spain may impose an authorisation requirement on the transfer of certain items not listed in Annex I, in application of the relevant provisions of Regulation (EU) 2021/821.

3. The Kingdom of Spain may prohibit or impose an authorisation requirement on the transfer of dual-use items not listed in Annex I of Regulation (EU) 2021/821 for reasons of public security, including the prevention of acts of terrorism, or for human rights considerations.

4. The applications for the authorisations referred to in paragraph 1 shall include:

(a) applications for licenses for physical exports, including those for the purpose of licensed production of military equipment in third countries;

(b) applications for licenses for imports into the customs territory of the Union;

[1] Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (OJ EU L 206, 11.6.2021, p. 1, ELI: http://data.europa.eu/eli/reg/2021/821/oj).

(c) applications for brokering licenses;

(d) applications for "transit" or "transhipment" licenses; and

(e) applications for licenses for any intangible transfers of software and technology, by means such as electronic media, fax or telephone.

PUBLIC

ARTICLE 263

Authorisations

1. Transfer authorisations under this Chapter shall be granted by the competent authority of the Kingdom of Spain in accordance with the provisions of Regulation (EU) 2021/821 of the European Parliament and of the Council. As concerns firearms, transfer authorisations under this Agreement shall be granted by the competent authority of the Kingdom of Spain in accordance with the provisions of Regulation (EU) No 258/2012 and Regulation (EU) 2025/41.

2. When deciding whether or not to grant an authorisation or to prohibit a transit under this Agreement, the Kingdom of Spain shall take into account all relevant considerations, including:

(a) the Kingdom of Spain's international obligations and commitments, in particular the obligations and commitments it has accepted as member of the relevant international non-proliferation regimes and export control arrangements, or by ratification of relevant international treaties;

(b) its obligations under sanctions imposed by legal acts of the Union or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations;

(c) considerations of national foreign and security policy, including those covered by Common Position 2008/944/CFSP as amended by Council Decision (CFSP) 2025/779; and

(d) considerations about intended end-use and the risk of diversion.

3. The competent authority of the Kingdom of Spain, acting in accordance with this Chapter, may refuse to grant a transfer authorisation and may annul, suspend, modify or revoke a transfer authorisation which it has already granted, in accordance with Regulation (EU) No 258/2012 and Regulation (EU) 2025/41.

ARTICLE 264

Special procedure

1. The transfer of the items referred to in Articles 260, 261 and 262, with the exception of goods transferred for commercial purposes and sanitary and phytosanitary goods shall be regulated exclusively by the special procedure of this Article, provided that such items:

(a) arrive at or depart from Gibraltar airport or port aboard State aircraft or State vessels or in State consignments as defined in the administrative arrangements referred to in Article 260(7); and

PUBLIC

(b) are destined in Gibraltar exclusively for the official use of the Ministry of Defence of the United Kingdom or of visiting third country forces.

Goods covered by this Article shall not be considered to be in free circulation in Gibraltar but in a form of temporary admission under the control of the relevant authorities. These goods may not be released for free circulation in the customs territory of the Union. In the event of these goods being placed on the market in Gibraltar, Title II shall apply. Union law shall apply to the transfer of these goods from Gibraltar to the customs territory of the Union.

2. Where the conditions under paragraph 1 are met, as soon as reasonably practicable and in any event before the transfer of the items, the United Kingdom shall provide the Liaison Officer of the Kingdom of Spain with a list of the items and a certificate signed by the United Kingdom Liaison Officer guaranteeing that such items:

(a) will be securely transported and stored in designated facilities; and

(b) will be subject to a strict accounting and tracking system.

PUBLIC

CHAPTER 6

IMPLEMENTATION, APPLICATION, SUPERVISION AND ENFORCEMENT

ARTICLE 265

Implementation, application, supervision and enforcement

1. The competent authorities within the Union shall verify compliance with this Title and carry out any necessary tasks, having, inter alia, access to the relevant infrastructures, documentation and records and any other relevant information.

2. The competent authorities of the United Kingdom, in respect of Gibraltar, shall cooperate in that regard and shall be informed in advance of the reasons for any visit, so that it can be carried out jointly with the competent authorities within the Union.

3. The practical modalities for the implementation of this Article are laid down in Annex 22.

PUBLIC

ARTICLE 266

Union law which applies to the United Kingdom, in respect of Gibraltar, and in Gibraltar in accordance with Article 247(1)

Regarding the provisions of Union law which apply to the United Kingdom, in respect of Gibraltar, and in Gibraltar, by virtue of Article 247(1), the following shall apply, without prejudice to Article 19:

(a) any reference to the territory defined in Article 4 of Regulation (EU) No 952/2013 in the applicable provisions of this Agreement, as well as in the provisions of Union law made applicable to the United Kingdom, in respect of Gibraltar, and in Gibraltar, by this Agreement, shall be read as including Gibraltar. In particular, with regard to the Union's indirect tax Directives the Union shall take the measures necessary to ensure that transactions or movements between Gibraltar and Member States or between Member States and Gibraltar are not treated as transactions or movements between third countries or territories and the Union;

(b) unless the Union considers that full or partial access by the United Kingdom, in respect of Gibraltar, is strictly necessary to enable the United Kingdom, in respect of Gibraltar, to comply with its obligations under this Agreement, in respect of access to any network, information system or database established on the basis of Union law, references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Agreement shall not be read as including the United Kingdom, in respect of Gibraltar; and

PUBLIC

(c) authorities of the United Kingdom or of the United Kingdom, in respect of Gibraltar, shall not act as leading authority for risk assessments, examinations, approvals and authorisation procedures provided for in Union law made applicable by this Agreement.

PUBLIC

ARTICLE 267

Goods, cash and pets brought by persons

Until the entry into force of the decision referred to in Article 247(2), the entry into Gibraltar of goods carried by travellers in their personal luggage, as well as their pets, and the entry and exit of cash shall be subject to the provisions set out in Annexes 22 and 23.

ARTICLE 268

References to certain Union acts

For the purpose of this Title, references to Union acts in Articles 241, 256, 261, 262, 263 and 266 as well as in paragraph 1(a) of Article 3 of Annex 19 and paragraph 5 of Article 1 of Annex 21 shall be understood to include those Union acts as amended or replaced in future as well as any Union act implementing or supplementing those Union acts.

CHAPTER 7

TRANSITIONAL ARRANGEMENTS

PUBLIC

ARTICLE 269

Goods placed on the market in Gibraltar

1. Title II shall not apply to goods the movement of which started before the entry into force of this Agreement and ended thereafter.

2. The provisions of this Agreement relating to indirect tax shall not apply to goods which are covered by a certificate of exemption from import duty issued by the United Kingdom, in respect of Gibraltar, under Regulation 8, Part 3 of the Gibraltar Integrated Tariff Regulations 2017 before the entry into force of this Agreement, to the extent set out in paragraph 4, provided that the United Kingdom, in respect of Gibraltar, has provided to the competent authorities within the Union copies of all such extant certificates together with relevant information on the respective quantity of goods imported over the last three years where applicable. The quantities of goods to be imported shall be commensurate to the relevant projects covered by the certificate.

3. Where an economic operator relies on paragraph 1 or 2 with respect to a specific good or goods, that operator shall bear the burden of demonstrating, on the basis of any relevant document, that the movement started before the entry into force of this Agreement or that the certificate was issued before the entry into force of this Agreement.

4. Paragraph 1 shall cease to apply 2 months after the entry into force of this Agreement. Paragraph 2 shall apply for a period of no longer than the duration of the relevant certificate or a period of 3 months after the entry into force of this Agreement, whichever is shorter.

5. Any good that was lawfully placed on the market in Gibraltar before the date of entry into force of this Agreement shall, for a period of 3 months after the entry into force of this Agreement, not be subject to the requirements of Article 256.

6. Where an economic operator relies on paragraph 5 with respect to a specific good, that operator shall bear the burden of demonstrating, on the basis of any relevant document, that the good was placed on the market in Gibraltar before the entry into force of this Agreement, together with providing details of the quantities of goods concerned.

ARTICLE 270

Ending of temporary storage or special customs procedures

1. This Title shall not apply to goods that were in temporary storage in Gibraltar or any special customs procedure commenced under the legislation of the United Kingdom, in respect of Gibraltar, prior to the date of entry into force of this Agreement, provided that, as applicable:

(a) the goods are discharged from the special procedure within a period of two months after the entry into force of this Agreement; or

PUBLIC

(b) the temporary storage ends prior to the legal time limit for temporary storage set out in that legislation.

2. This Title shall apply to the release for free circulation, discharge of the special procedure and any re-export from Gibraltar of goods referred to in paragraph 1.

PUBLIC

TITLE III

TRANSPORT

CHAPTER 1

AVIATION

ARTICLE 271

Definitions

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

(a) "air carrier" means an air transport undertaking holding a valid operating license or equivalent;

(b) "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, including both scheduled and non-scheduled air services;

(c) "competent authority" means a government agency or entity responsible for the relevant regulatory and administrative functions under this Agreement; and

(d) "Gibraltar airport" means the airport located in the isthmus of Gibraltar[1] in respect of the services which are the subject of the Joint Venture referred to in Article AIR.4.

PUBLIC

ARTICLE 272

Distribution of traffic rights

1. For the conduct of air transport, the air carriers of each Party shall have on a non-discriminatory basis:

(a) the right to fly across the territory of Gibraltar without landing; and

(b) the right to make stops for non-traffic purposes at Gibraltar airport.

[1] The present Agreement, any supplementing agreements mentioned in Article COMPROV.2, any administrative arrangements or arrangements related to this Agreement, and any measures or instruments or conduct taken in application or as a result thereof or pursuant thereto, shall be without prejudice to, and shall not otherwise affect the respective legal positions of the Kingdom of Spain or of the United Kingdom of Great Britain and Northern Ireland with regard to sovereignty and jurisdiction over the territory on which the airport is located and shall not constitute the basis for any assertion or denial of sovereignty including in legal proceedings or otherwise.

2. Air transport services between Gibraltar airport and points in the Union territory may be provided only by air carriers of the Union or by air carriers authorised by the Union. These services shall be provided in accordance with Union law.

3. Air transport services between Gibraltar airport and points in the United Kingdom may be provided only by air carriers of the United Kingdom or by air carriers authorised by the United Kingdom. These services shall be provided in accordance with the law of the United Kingdom.

4. The competent authorities of the Parties agree to consult each other on the possible extension to Gibraltar of relevant existing or future agreements or other international legal instruments as necessary as well as on their practical implementation.

ARTICLE 273

Rules applicable to Gibraltar airport

1. The air traffic management and air navigation services provided to civil air traffic at Gibraltar airport shall offer a level of safety and interoperability with civil operations and systems that is equivalent to the services provided in civil airports where International Civil Aviation Organisation (ICAO) provisions apply.

2. Safety and security provided to civil air traffic at Gibraltar airport shall be provided, at a minimum, at the level of equivalent services provided in civil airports where ICAO provisions apply.

PUBLIC

3. In the area of airport charges, ground handling, slots, disabled persons and persons with reduced mobility, the provisions contained in the acts listed in the Annex 25 shall apply to Gibraltar airport.

4. Under the conditions laid down in paragraphs 4 and 5, the provisions contained in any subsequent act:

(a) amending or replacing an act listed in the Annex 25;

(b) supplementing or implementing an act listed in the Annex 25; or

(c) on the subject matter of an act listed in the Annex 25.

shall also apply to Gibraltar airport.

5. Where the Union adopts a subsequent act referred to in paragraph 3, it shall immediately notify the United Kingdom, in respect of Gibraltar, of the adoption of that act. Within thirty days of this notification, the United Kingdom, in respect of Gibraltar, shall notify the Union of its decision whether to accept the content of, and to implement into its domestic law, the subsequent Union act. The acceptance by the United Kingdom, in respect of Gibraltar, of the content of the subsequent Union act shall create rights and obligations between the United Kingdom, in respect of Gibraltar, and the Union.

6. Within thirty days of the Union notification referred to in paragraph 4, paragraph 3 shall apply in relation to the subsequent Union act.

PUBLIC

7. The competent authorities of the Union and the United Kingdom, in respect of Gibraltar, shall, under the auspices of the Specialised Committee on Aviation established pursuant to Article AIR.5:

(a) exchange regular information on safety and security matters; and

(b) conduct joint inspection visits to Gibraltar airport for the purposes of monitoring compliance with the provisions of the Annex and security at Gibraltar airport.

The visits shall be proportionate and take place at the request of either Party that the other Party cannot refuse. Such inspection visits and exchange of information shall happen regarding and during the operation of flights between Gibraltar airport and points in the Union as well as the preparation for such operation. The practical modalities for the implementation of this paragraph will be agreed by the Specialised Committee on Aviation.

The Union and the United Kingdom, in respect of Gibraltar, shall report back on the implementation of this paragraph to the Specialised Committee on Aviation.

8. Air carriers that are the subject of an operating ban in the Union under Regulation (EC) No. 2111/2005 shall not be permitted to operate to and from Gibraltar airport.

The reference to Regulation (EC) No 2111/2005 shall be understood to include the regulation as amended or replaced in future as well as any Union act implementing or supplementing this regulation.

9. Air carriers that are subject to the restrictive measures of either of the Parties shall not be permitted to operate to and from Gibraltar airport.

PUBLIC

ARTICLE 274

Joint Venture

A joint venture company shall be constituted under the shared responsibility of the Kingdom of Spain and of the United Kingdom, in respect of Gibraltar. The joint venture company shall not be constituted in either State sharing responsibility for the joint venture company and shall be constituted in an EU Member State. The joint venture shall select, through regular public tender, and supervise the commercial company in charge of the day-to-day management of Gibraltar airport.

The public tender may foresee the contract and labour law applicable to the commercial company and its operations.

Private persons or companies who litigate against the joint venture or the commercial company may do so in line with relevant domestic, Union or international instruments, as well as any modalities set out in those instruments, including through the courts of the United Kingdom, in respect of Gibraltar, or of a Member State, as appropriate.

ARTICLE 275

Specialised Committee on Aviation

The Specialised Committee on Aviation shall address matters under this Chapter and shall have the power to:

(a) make recommendations to the Cooperation Council to adopt a decision amending Annex 25;

PUBLIC

(b) monitor and review the implementation and ensure the proper functioning of this Chapter;

(c) address discrepancies following joint inspection visits pursuant to Article AIR.3(6);

(d) discuss technical issues arising from the implementation of this Chapter;

(e) make recommendations to the Parties regarding the implementation and application of this Chapter;

(f) consider any matter of interest relating to an area covered by this Chapter; and

(g) monitor, hold dialogues and exchanges in areas of shared interest, with the view of identifying opportunities to cooperate and share best practices and expertise.

PUBLIC

CHAPTER 2

ROAD TRANSPORT

ARTICLE 276

Transport of goods and movement of ambulances between the territories of the Parties

1. The Parties shall allow the transport of goods by road between their territories. However, within the territory of the Union, those transport operations shall be limited to the contiguous frontier zone.

2. The Union shall allow within its territory the provision of the following ambulance services necessary to protect health, by operators established in Gibraltar and acting under the direction of the Gibraltar Health Authority, subject to the requirement that this provision is applied in a reasonable manner that does not lead to arbitrary or unjustifiable discrimination or to a disguised restriction on trade in services:

(a) emergency ambulance services;

(b) ambulance services required for the specialist handling of serious and acute medical conditions between Gibraltar and those establishments listed in Annex 26, which are contiguous to Gibraltar for public health purposes.

3. The United Kingdom, in respect of Gibraltar, shall allow within the territory of Gibraltar the provision of the following ambulance services necessary to protect health, by Union operators established in the contiguous frontier zone and acting under the direction of authorities duly authorised under relevant regulations, subject to the requirement that this provision is applied in a reasonable manner that does not lead to arbitrary or unjustifiable discrimination or to a disguised restriction on trade in services:

(a) emergency ambulance services; and

(b) ambulance services required for the specialist handling of serious and acute medical conditions between Gibraltar and those establishments listed in Annex 26, which are contiguous to Gibraltar for public health purposes.

PUBLIC

ARTICLE 277

Transport of goods to and from Gibraltar through the territory of the Union

The Union shall allow the transport, with transit through its territory, of goods by road with a commercial purpose between the territory of the United Kingdom and Gibraltar, and unladen journeys that are made in conjunction with that transport.

PUBLIC

ARTICLE 278

Requirements for operators

1. Road haulage operators of a Party undertaking a journey referred to in Articles 276 or 277 shall hold a valid licence issued in accordance with paragraph 2.

2. Licences shall only be issued, in accordance with the law of the Parties, to road haulage operators who comply with the requirements set out in Part A of Annex 27 governing the admission to, and the pursuit of, the occupation of road haulage operator.

3. A certified true copy of the licence shall be kept on board the vehicle and shall be presented at the request of any inspecting officer authorised by a Party. The licence and the certified true copy shall correspond to one of the models set out in Appendix X-A-1-3 of Part A to Annex 27, which also lays down the conditions governing the licence's use. The licence shall contain at least two of the security features listed in Appendix X-A-1-4 to Part A of Annex 27.

ARTICLE 279

Exemption from licencing requirement in the contiguous frontier zone

The following types of transport of goods and unladen journeys made in conjunction with such transport may be conducted in the contiguous frontier zone without a valid licence as referred to in Article TRANSP.3:

(a) transport of mail as a universal service;

(b) transport of vehicles which have suffered damage or breakdown;

(c) transport of goods in motor vehicles the permissible laden mass of which, including that of trailers, does not exceed 2,5 tonnes;

(d) transport of medicinal products, appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters and humanitarian assistance;

(e) transport of goods in vehicles provided that the following conditions are fulfilled:

(i) the goods carried are the property of the road haulage operator 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;

PUBLIC

(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 no more than ancillary to the overall activities of the road haulage operator;

(f) transport of goods by means of motor vehicles with a maximum authorised speed not exceeding 40 km/h.

ARTICLE 280

Requirements for drivers

Drivers of the vehicles of road haulage operators of a Party undertaking a journey referred to in Articles 276 or 277 shall:

(a) hold a Certificate of Professional Competence issued in accordance with Section 1 of Part B of Annex 27; and

(b) comply with the rules on driving and working time, rest periods, breaks and the use of tachographs in accordance with Sections 2 to 4 of Part B of Annex 27.

PUBLIC

ARTICLE 281

Requirements for vehicles

A Party shall not reject or prohibit the use in its territory of a vehicle undertaking a journey referred to in Articles TRANSP. 276 or 277 if the vehicle complies with the requirements set out in Section 1 of Part C of Annex 27.

Vehicles of road haulage operators of a Party undertaking a journey referred to in Articles 276 or 277 shall be equipped with a tachograph constructed, installed, used, tested and controlled in accordance with Section 2 of Part C of Annex 27.

ARTICLE 282

Road traffic rules

Drivers of the vehicles of road haulage operators of a Party undertaking a journey referred to in Articles 276 or 277 shall, when in the territory of the other Party, comply with the national laws and regulations in force in that territory concerning road traffic.

ARTICLE 283

Development of laws and Specialised Committee on Economy and Trade

1. When a Party proposes a new regulatory measure in an area covered by Annex 27, it shall:

(a) notify the other Party of the proposed regulatory measure as soon as possible; and

PUBLIC

(b) keep the other Party informed of the progress of the regulatory measure.

2. At the request of a Party, an exchange of views shall take place within the Specialised Committee on Economy and Trade, no later than two months after the submission of the request, as to whether the proposed new regulatory measure would apply to journeys referred to in Articles 276 or 277.

3. When a Party adopts a new regulatory measure referred to in paragraph 1, it shall notify the other Party and supply the text of the new regulatory measure within one week of its publication.

4. The Specialised Committee on Economy and Trade shall meet to discuss any new regulatory measure adopted, on request by a Party, within two months of the submission of the request, whether or not a notification has taken place in accordance with paragraph 1 or 3, or a discussion has taken place in accordance with paragraph 2.

5. The Specialised Committee on Trade and Economy shall have the power to:

(a) amend Annex 26;

(b) confirm that the amendments made by the new regulatory measure conform to Annex 27;

(c) decide on any other measure aimed at safeguarding the proper functioning of this Chapter; and

(d) adopt any modifications to Annex 27 as may be necessary to reflect changes made to Annex 31 to the Trade and Cooperation Agreement.

PUBLIC

ARTICLE 284

Remedial measures

1. If a Party considers that the other Party has adopted a new regulatory measure that does not comply with the requirements of Annex 27, in particular in cases where the Specialised Committee on Economy and Trade has not reached a decision under Article 283, and the other Party nevertheless applies the provisions of the new regulatory measure to the Party's road haulage operators, drivers or vehicles, the Party may, after notifying the other Party, adopt appropriate remedial measures, including the suspension of obligations under this Agreement or any supplementing agreement, provided that such measures:

(a) do not exceed the level equivalent to the nullification or impairment caused by the new regulatory measure adopted by the other Party that does not comply with the requirements of Annex 27; and

(b) take effect at the earliest 7 days after the Party which intends to take such measures has given the other Party notice under this paragraph.

2. The appropriate remedial measures shall cease to apply:

(a) when the Party having taken such measures is satisfied that the other Party is complying with its obligations under this Chapter; or

(b) in compliance with a ruling of the arbitration tribunal.

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

PUBLIC

ARTICLE 285

Taxation

1. Vehicles used by road haulage operators of a Party for the carriage of goods in accordance with Articles 276 or 277 shall be exempt from the taxes and charges levied on the possession or circulation of vehicles in the territory of the other Party.

2. The exemption referred to in paragraph 1 shall not apply to:

(a) a tax or charge on fuel consumption;

(b) a charge for using a road or network of roads; or

(c) a charge for using particular bridges, tunnels or ferries.

3. The fuel contained in the standard tanks of the vehicles and of special containers, admitted temporarily, which is used directly for the purpose of propulsion and, where appropriate, for the operation, during transport, of refrigeration systems and other systems, as well as lubricants present in the motor vehicles and required for their normal operation during the journey, shall be free of customs duties and any other taxes and levies, such as VAT and excise duties, and shall not be subject to any import restrictions.

4. The spare parts imported for repairing a vehicle on the territory of one Party that has been registered or put into circulation in the other Party, shall be admitted under cover of a temporary duty-free admission and without prohibition or restriction of importation. The replaced parts are subject to customs duties and other taxes (VAT) and shall be re-exported or destroyed under the control of the customs authorities of the other Party.

PUBLIC

CHAPTER 3

MARITIME TRANSPORT

PUBLIC

ARTICLE 286

Maritime transport

Each Party shall:

(a) accord to ships supplying international maritime transport services[1] and flying the flag of any Member State or of the United Kingdom (Gibraltar), or operated by service suppliers of the other Party, treatment no less favourable than that accorded to its own ships with regard to: (i) access to ports; (ii) the use of port infrastructure; (iii) the use of maritime auxiliary services[2]; and (iv) customs facilities and the assignment of berths and facilities for loading and unloading, including related fees and charges;

[1] "International maritime transport services" means the transport of passengers or cargo by seagoing 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, including the direct contracting with providers of other transport services, with a view to covering door-to-door or multimodal transport operations under a single transport document.

[2] "Maritime auxiliary services" means maritime cargo handling services, customs clearance services, container station and depot services, maritime agency services, maritime freight forwarding services and storage and warehousing services.

(b) make available, in the port and the port internal waters, to international maritime transport service 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 (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.

PUBLIC

TITLE IV

EXCEPTIONS

ARTICLE 287

General exceptions

1. Nothing in Titles I and II of Part Three shall be construed as preventing a Party from adopting or maintaining measures compatible with Article XX of GATT 1994. To that end, Article XX of 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 trade in services, nothing in Title III of Part Three 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[1];

(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; and

(iii) safety.

[1] 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.

PUBLIC

3. For greater certainty, the Parties understand that, to the extent that such measures are otherwise inconsistent with the provisions of the titles referred to in paragraphs 1 and 2 of this Article:

(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 or 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 GATT 1994 or under point (b) of paragraph 2 of this Article.

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 make 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.

PUBLIC

ARTICLE 288

Security exceptions

PUBLIC

Nothing in Part Three 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 any 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 traffic and transactions in other goods and materials, services and 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) taken 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 Charter of the United Nations for the maintenance of international peace and security.

ARTICLE 289

Taxation

1. Nothing in Titles I and II of Part Three shall affect the rights and obligations of either the Union or its Member States and the United Kingdom, in respect of Gibraltar, 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. With regard to a tax convention between the Union or its Member States and the United Kingdom, in respect of Gibraltar, the relevant competent authorities under this Agreement and that tax convention shall jointly determine whether an inconsistency exists between this Agreement and the tax convention.[1]

2. Articles 276 and 277 shall not apply to an advantage accorded by a Party pursuant to a tax convention.

[1] For greater certainty, such determination shall be without prejudice to Title I of Part Six.

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 Titles I and II of Part Three shall be construed to prevent the adoption, maintenance or enforcement by a Party of any measure that:

(a) aims at ensuring the equitable or effective[1] imposition or collection of direct taxes; or

(b) 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.

PUBLIC

[1] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:
(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
(iv) apply to consumers of services supplied in or from the territory of the other Party or of a third country in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

4. For the purposes of this Article, the following definitions apply:

(a) "direct taxes" comprise 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

(b) "residence" means residence for tax purposes; and

(c) "tax convention" means a convention for the avoidance of double taxation or any other international agreement or arrangement relating wholly or mainly to taxation[1].

ARTICLE 290

WTO Waivers

If an obligation in 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 substantially equivalent provision in this Agreement.

[1] This includes the International Agreement on Taxation and the Protection of Financial Interests between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Spain regarding Gibraltar dated 4 March 2019.

PART FOUR

FRONTIER WORKERS

PUBLIC

TITLE I

PERSONAL SCOPE

ARTICLE 291

Personal scope

1. This Part shall apply to the following persons:

(a) Union citizens legally residing in the Kingdom of Spain;

(b) United Kingdom nationals legally residing in Gibraltar; and

(c) Family members of the persons referred to in point (a) provided they legally reside in Spain and family members of the persons referred to in point (b) provided they legally reside in Gibraltar. For the purposes of this Part and irrespective of their nationality, family members are:

(i) the spouse;

(ii) the partner with whom the persons referred to in points (a) and (b) have contracted a registered partnership in accordance with the conditions laid down in the relevant legislation of a Member State or the United Kingdom, in respect of Gibraltar, provided that the legislation of Spain or the United Kingdom, in respect of Gibraltar, treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of Spain or of the United Kingdom, in respect of Gibraltar, respectively.

(iii) the direct descendants who are under the age of 21 or are dependents and those of the spouse or partner as defined in point (ii);

(iv) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (ii).

2. For the purposes of this Part, persons referred to in points (a) and (b) of paragraph 1 who pursue an economic activity as an employed person either in Gibraltar or in Spain and who return at least once a week to Spain or to Gibraltar, respectively, are employed frontier workers.

3. For the purposes of this Part, persons referred to in points (a) and (b) of paragraph 1 who pursue an economic activity as a self-employed person both in Gibraltar, in accordance with the law of the United Kingdom, in respect of Gibraltar, and in Spain, in accordance with the law of Spain, and who return at least once per week to Spain and Gibraltar, respectively, are self-employed frontier workers.

PUBLIC

TITLE II

FRONTIER WORKERS' RIGHTS AND ANCILLARY RIGHTS

PUBLIC

ARTICLE 292

Frontier Workers' rights

1. Persons referred to in Article 291(1)(a) shall have a right to take up and pursue an activity as an employed frontier worker in Gibraltar in accordance with the rules applicable to United Kingdom nationals in Gibraltar.

2. Persons referred to in Article 291(1)(b) shall have a right to take up and pursue an activity as an employed frontier worker in the Kingdom of Spain in accordance with the rules applicable to Spanish nationals in the Kingdom of Spain.

3. Persons referred to in Article 291(1)(a) who are employed frontier workers shall enjoy the right to equal treatment with employed persons referred to in Article 291(1)(b) in Gibraltar. This shall entail:

(a) the right not to be discriminated against on grounds of nationality as regards employment, remuneration and other conditions of work and employment;

(b) the right to equal treatment in respect of conditions of employment and work, in particular as regards remuneration, dismissal and in case of unemployment, reinstatement or re-employment;

(c) social and tax advantages, except rights of access to housing;

(d) membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union, however, they may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law;

(e) the same rights as regards access to training in vocational schools and retraining centres.

4. Persons referred to in Article 291(1)(b) who are employed frontier workers shall enjoy the same right to equal treatment with employed Spanish nationals in Kingdom of Spain in respect of the matters referred to in paragraph 3.

5. Persons as referred to in Article 291(1)(a) and (b) shall enjoy the following rights in Gibraltar and the Kingdom of Spain, respectively:

(a) the right to enter, stay and leave in order to register with the employment services to allow these persons to find out about the employment opportunities corresponding to their professional qualifications and, if necessary, take appropriate steps to take up employment as employed frontier workers; this shall include the right to be assisted by the employment offices under the same conditions as United Kingdom nationals in Gibraltar and Spanish nationals in the Kingdom of Spain;

(b) the right to enter, stay and leave while employed as a frontier worker or pursuing an activity as a self-employed frontier worker;

PUBLIC

(c) the right to retain frontier worker status provided they are in one of the following circumstances:

(i) they are temporarily unable to work as the result of an illness or accident;

(ii) they are in duly recorded involuntary unemployment after having been employed for more than one year and have registered as job-seekers with the relevant employment office;

(iii) they are in duly recorded involuntary unemployment after having completed a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and have registered as job-seekers with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

(iv) they embark on vocational training. Unless they are involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.

6. Persons referred to in Article 291(1)(a) and (b) may be refused the right to take up employment in the public service which involves direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, as the case may be or of other public authorities.

7. Persons referred to in Article 291(1)(a) and (b) who are self-employed frontier workers shall enjoy the rights set out in points (b) to (e) of paragraph 3.

PUBLIC

8. Paragraph 7 shall apply *mutatis mutandis* to persons as referred to in Article 291(1)(b) who are self-employed frontier workers.

PUBLIC

ARTICLE 293

Family members of frontier workers

1. Family members, as defined in Article 291(1)(c) of persons referred to in Article 291(1)(a) who are employed frontier workers or self-employed frontier workers, shall enjoy a derivative right to equal treatment in the access to social and tax advantages with family members of persons referred to in Article 291(1)(b) who are employed or self-employed in Gibraltar.

2. The children of persons referred to in Article 291(1)(a) who are employed or self-employed frontier workers in Gibraltar provided that such children are residing in Gibraltar shall enjoy the right to equal treatment in the access to the general educational, apprenticeship and vocational training courses, with the children of persons referred to in Article 291(1)(b) employed in Gibraltar.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to the family members and the children of persons referred to in Article 291(1)(b) who are employed frontier workers or self-employed frontier workers in the Kingdom of Spain.

ARTICLE 294

Objectively justified measures

Measures derogating from equal treatment pursuant to paragraphs 3, 4, and 7 of Article 292 are permissible only if they are objectively justified. In order to be justified, they must be appropriate for securing the attainment of a legitimate objective and must not go beyond what is necessary to attain that objective.

PUBLIC

ARTICLE 295

Posted workers

1. Persons referred to in Article 291(1)(a) and (b) who pursue an activity as employed persons for an employer which normally carries out its activities in the Kingdom of Spain and Gibraltar, respectively, and who are posted for a limited period by that employer to Gibraltar and the Kingdom of Spain, respectively, to supply services that are both locally produced and consumed at the contiguous frontier zone on that employer's behalf shall enjoy the right to enter, leave and stay without hindrance necessary for the supply of said services and shall enjoy, on the basis of equality of treatment, the terms and conditions of employment which are laid down in the territory where the worker is posted and which are set out in that territory by law, regulation or administrative provision and/or by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 2. These terms and conditions of employment are listed in Annex 28 to this Agreement. The application of these terms and conditions of employment shall not prevent the application of terms and conditions of employment which are more favourable to posted workers.

2. For the purpose of this Article, "collective agreements or arbitration awards which have been declared universally applicable" means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.

3. In the absence of, or in addition to, a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the previous subparagraph, Gibraltar and the Kingdom of Spain, may, if they so decide, base themselves on:

(a) collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned; and/or

(b) collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory.

4. Equality of treatment, within the meaning of paragraph 1, shall be deemed to exist where national employers in a similar position:

(a) are subject, in the place in question or in the sector concerned, to the same obligations as posting employers as regards the matters listed in Annex 28, and

(b) are required to fulfil such obligations with the same effects.

PUBLIC

ARTICLE 296

Documentation

Persons referred to in Article 291(1)(a) and (b) who are employed or self-employed frontier workers shall have the right to be issued with a document certifying their status under this Part. This document may be in a digital form.

PUBLIC

ARTICLE 297

Public policy, public security and public health

1. The rights granted under this Title may be restricted by means of measures which are justified on grounds of public policy, public security or public health.

2. Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

3. The only diseases justifying measures restricting stay, entry or exit shall be the diseases with epidemic potential as defined by the relevant instruments of the World Health Organisation and other infectious diseases or contagious parasitic diseases if they are the subject to protection provisions applying to persons as referred to in Article 291(1)(a) and (b).

4. The persons concerned shall be notified in writing of any decision taken under point 1 in such a way that they are able to comprehend its content and the implications for them. They shall be informed, precisely and in full, of the public policy, public security or public health grounds on which the decision taken in their case is based, unless this is contrary to the interests of State security. The notification shall specify the court or administrative authority with which the person concerned may lodge an appeal, the time limit for the appeal and, where applicable, the time allowed for the person to leave the territory.

5. The persons concerned shall have access to judicial and, where appropriate, administrative redress procedures to appeal against or seek review of any decision taken against them on the grounds of public policy, public security or public health. The redress procedures shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate.

6. The United Kingdom, in respect of Gibraltar, or the Kingdom of Spain, may not prevent the individual from submitting their defence in person, except when their appearance may cause serious troubles to public policy or public security or when the appeal or judicial review concerns a denial of entry to the territory.

PUBLIC

TITLE III

SOCIAL SECURITY COORDINATION

PUBLIC

ARTICLE 298

Social security coordination

In order to secure the social security rights of the persons covered by the Protocol on Social Security Coordination, the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall apply their social security systems in accordance with the Protocol.

PART FIVE

FINANCIAL PROVISIONS

ARTICLE 299

Financial provisions

1. The Cooperation Council shall establish a financial mechanism to promote cohesion between Gibraltar and the contiguous frontier zone, including on matters of training and employment. Any such measures should take into account the protection of the Parties' financial interests against fraud and other illegal activities and irregularities.

2. Both Parties should provide funding for this mechanism.

PART SIX

DISPUTE SETTLEMENT

PUBLIC

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 300

Objectives

The objective of this Title is to establish an effective and efficient mechanism for avoiding and settling disputes between the Parties concerning the interpretation and application of this Agreement and supplementing agreements, with a view to reaching, where possible, a mutually agreed solution.

ARTICLE 301

Scope

1. This Title applies, subject to paragraphs 2 to 5, to disputes between the Parties concerning the interpretation and application of the provisions of this Agreement or of any supplementing agreement ("covered provisions").

2. The covered provisions shall include all provisions of this Agreement and of any supplementing agreement with the exception of:

(a) Article 2;

(b) Title II of Part One;

(c) Title V of Part Two, including when applying in relation to situations governed by other provisions of this Agreement;

(d) Article 199(1), (2) and (4), 207 and 208, Chapters 3, 4, 5 and 6 of Title I of Part.

3. The Cooperation Council may be seized by a Party with a view to resolving a dispute with respect to obligations arising from the provisions referred to in paragraph 2.

4. Article 302 applies to the provisions referred to in paragraph 2.

5. Notwithstanding paragraphs 1 and 2, of this Part shall not apply to disputes concerning the interpretation and application of the provisions of the Protocol on Social Security Coordination or its Annexes in individual cases.

6. This Part does not apply to any disputes with regard to sovereignty and jurisdiction. If the respondent Party submits a reasoned statement to the arbitration tribunal, to the effect that the request may affect the legal position of the United Kingdom or of the Kingdom of Spain or with regard to sovereignty and jurisdiction, the arbitration tribunal shall not decide on the dispute with regard to sovereignty and jurisdiction or on any matter that requires or implies a decision on sovereignty or jurisdiction and shall immediately declare its lack of jurisdiction on the matters regarding sovereignty and jurisdiction or having an effect thereon.

PUBLIC

Any decision adopted in the framework of this Part, including decisions and rulings by an arbitration tribunal, shall not produce any legal effects direct or indirect, on the legal position of the United Kingdom or of the Kingdom of Spain with regard to sovereignty and jurisdiction.

PUBLIC

ARTICLE 302

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 mechanism of settlement other than those provided for in this Agreement.

ARTICLE 303

Choice of forum

1. If a dispute arises regarding a measure allegedly in breach of an obligation under this Agreement or any supplementing agreement and of a substantially equivalent obligation under another international agreement to which both Parties are party, 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 Part are deemed to be initiated by a Party's request for the establishment of an arbitration tribunal under Article 305; and

(b) dispute settlement procedures under any other agreement are deemed to be initiated if they are initiated in accordance with the relevant provisions of that agreement.

4. Without prejudice to paragraph 2, nothing in this Agreement or any supplementing agreement shall preclude a Party from suspending obligations authorised under the dispute settlement procedures of another international agreement to which the Parties are party. Any international agreement between the Parties shall not be invoked to preclude a Party from suspending obligations under this Part.

PUBLIC

CHAPTER 2

PROCEDURE

ARTICLE 304

Consultations

1. If a Party ("the complaining Party") considers that the other Party ("the respondent Party") has breached an obligation under this Agreement or under 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. The complaining Party may seek consultations by means of a written request delivered to the respondent Party. The complaining Party shall specify in its written request the reasons for the request, including the identification of the measures at issue and the legal basis for the request, and the covered provisions it considers applicable.

3. The respondent Party shall reply to the request promptly, and in any case 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 in person or by any other means of communication agreed by the Parties. If held in person, consultations shall take place in the territory of the respondent Party, unless the Parties agree otherwise.

4. The consultations shall be deemed concluded within 45 days of the date of delivery of the request, unless the Parties agree to continue consultations.

PUBLIC

5. Consultations on matters of urgency, including those regarding perishable goods or seasonal goods shall be held within 20 days of the date of delivery of the request. The consultations shall be deemed concluded within those 20 days unless the Parties agree to continue consultations.

6. Each Party shall provide sufficient factual information to allow a complete examination of the measure at issue, including an examination of how that measure could affect the application of this Agreement or any supplementing agreement. Each Party shall endeavour to ensure the participation of personnel of their competent authorities who have expertise in the matter subject to the consultations.

7. The consultations referred to in paragraph 1 shall be held in the framework of the Cooperation Council, except for disputes relating to Chapters 3, 4 and 5 of Title I of Part Three. The Cooperation Council may resolve the dispute by a decision. The time periods referred to in paragraph 3 shall apply. The venue of meetings shall be governed by the rules of procedure of the Cooperation Council.

8. Consultations, and in particular all information designated as confidential and positions taken by the Parties during consultations, shall be confidential, and shall be without prejudice to the rights of either Party in any further proceedings.

PUBLIC

ARTICLE 305

Arbitration procedure

1. The complaining Party may request the establishment of an arbitration tribunal if:

(a) the respondent Party does not respond to the request for consultations within 10 days of the date of its delivery;

(b) consultations are not held within the time periods referred to in Article 304(1), (2) or (3);

(c) the Parties agree not to have consultations; or

(d) 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. In its request, the complaining Party shall explicitly identify the 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.

ARTICLE 306

Establishment of an arbitration tribunal

1. An arbitration tribunal shall be composed of three arbitrators.

PUBLIC

2. No later than 10 days after the date of delivery of the request for the establishment of an arbitration tribunal, the Parties shall consult with a view to agreeing on the composition of the arbitration tribunal.

3. If the Parties do not agree on the composition of the arbitration tribunal within the time period provided for in paragraph 2, each Party shall appoint an arbitrator from the sub-list for that Party established pursuant to Article 319 no later than five days after the expiry of the time period provided for in paragraph 2. If a Party fails to appoint an arbitrator from its sub-list within that time period, the co-chair of the Cooperation Council from the complaining Party shall select, no later than five days after the expiry of that time period, an arbitrator by lot from the sub-list of the Party that has failed to appoint an arbitrator. The co-chair of the Cooperation Council from the complaining Party may delegate such selection by lot of the arbitrator.

4. If the Parties do not agree on the chairperson of the arbitration tribunal within the time period provided for in paragraph 2, the co-chair of the Cooperation Council from the complaining Party shall select, no later than five days after the expiry of that time period, the chairperson of the arbitration tribunal by lot from the sub-list of chairpersons established pursuant to Article 319. The co-chair of the Cooperation Council from the complaining Party may delegate such selection by lot of the chairperson of the arbitration tribunal.

5. Should any of the lists provided for in Article 319 not be established or not contain sufficient names at the time a selection is made pursuant to paragraphs 3 or 4, the arbitrators shall be selected by lot from the individuals who have been formally proposed by one Party or both Parties in accordance with Annex 29 on the Rules of Procedure for Dispute Settlement.

PUBLIC

6. The date of establishment of the arbitration tribunal shall be the date on which the last of the three arbitrators has notified to the Parties the acceptance of their appointment in accordance with Annex 29 on the Rules of Procedure.

PUBLIC

ARTICLE 307

Requirements for arbitrators

1. All arbitrators shall:

(a) have demonstrated expertise in law, including international law, and in any matter covered by this Agreement or by any supplementing agreement and, in the case of a chairperson, also have experience in arbitration procedures;

(b) not be affiliated with or take instructions from either Party;

(c) serve in their individual capacities and not take instructions from any organisation or government with regard to matters related to the dispute; and

(d) comply with Annex 30 on the Code of Conduct for arbitrators.

2. All arbitrators shall be persons whose independence is beyond doubt, who possess the qualifications required for appointment to high judicial office in their respective jurisdictions or who are jurisconsults of recognised competence.

ARTICLE 308

Functions of the arbitration tribunal

The arbitration tribunal:

(a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of, and conformity of the measures at issue with, the covered provisions;

(b) shall set out, in its decisions and rulings, the findings of facts and law and the rationale behind any findings that it makes; and

(c) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

ARTICLE 309

Terms of reference

1. Unless the Parties agree otherwise no later than five days after the date of the establishment of the arbitration tribunal, the terms of reference of the arbitration tribunal shall be:

"to examine, in the light of the relevant covered provisions of this Agreement or of a supplementing agreement, the matter referred to in the request for the establishment of the arbitration tribunal, to decide on the conformity of the measure at issue with the provisions referred to in Article 301 and to issue a ruling in accordance with 311".

PUBLIC

2. If the Parties agree on terms of reference other than those referred to in paragraph 1, they shall notify the agreed terms of reference to the arbitration tribunal within the time period referred to in paragraph 1.

PUBLIC

ARTICLE 310

Urgent proceedings

1. If a Party so requests, the arbitration tribunal shall decide, no later than 10 days after the date of its establishment, whether the case concerns matters of urgency.

2. In cases of urgency, the applicable time periods set out in Article 311 shall be half the time prescribed therein.

ARTICLE 311

Ruling of the arbitration tribunal

1. The arbitration tribunal shall deliver an interim report to the Parties within 100 days after the date of establishment of the arbitration tribunal. If 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 deliver its interim report no later than 130 days after the date of establishment of the arbitration tribunal under any circumstances.

2. Each Party may deliver to the arbitration tribunal a written request to review precise aspects of the interim report within 14 days of its delivery. A Party may comment on the other Party's request within six days of the delivery of the request.

3. If no written request to review precise aspects of the interim report is delivered within the time period referred to in paragraph 2, the interim report shall become the ruling of the arbitration tribunal.

4. The arbitration tribunal shall deliver its ruling to the Parties within 130 days of the date of establishment of the arbitration tribunal. When the arbitration tribunal considers that 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 ruling. The arbitration tribunal shall not under any circumstances deliver its ruling later than 160 days after the date of establishment of the arbitration tribunal.

5. 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.

6. For greater certainty, a "ruling" or "rulings" as referred to in Articles 308, 309, 320 and Article 321(1), (3), (4) and (6) shall be understood to refer also to the interim report of the arbitration tribunal.

PUBLIC

ARTICLE 312

Disputes raising issues of interpretation on Union law

1. Where a dispute submitted to arbitration in accordance with this Part raises a question of interpretation of a concept or a provision of Union law contained in a Union act referred to in this Agreement, the arbitration panel 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 panel.

The arbitration panel shall make such request after having heard the Parties.

2. Without prejudice to the first sentence of the first subparagraph of paragraph 1, if the Union or the United Kingdom, in respect of Gibraltar, considers that a request in accordance with paragraph 1 is to be made, it may make submissions to the arbitration panel to that effect. In such case, the arbitration panel shall submit the request in accordance with paragraph 1 unless the question raised does not concern the interpretation of a concept or a provision of Union law contained in a Union act referred to in this Agreement. The arbitration panel shall provide reasons for its assessment. Within 10 days following the assessment, either Party may request the arbitration panel to review its assessment, and a hearing shall be organised within 15 days of the request for the Parties to be heard on the matter. The arbitration panel shall provide reasons for its assessment.

3. In the cases referred to in paragraphs 1 and 2, the time limits laid down in Article 311 shall be suspended until the Court of Justice of the European Union has given its ruling. The arbitration panel shall not be required to give its ruling less than 60 days from the date on which the Court of Justice of the European Union has given its ruling.

PUBLIC

CHAPTER 3

COMPLIANCE

PUBLIC

ARTICLE 313

Compliance measures

1. If, in its ruling referred to in Article 311(4), the arbitration tribunal finds that the respondent Party has breached an obligation under this Agreement or under any supplementing agreement, that Party shall take the necessary measures to comply immediately with the ruling of the arbitration tribunal in order to bring itself in compliance with the covered provisions.

2. The respondent Party, no later than 30 days after delivery of the ruling, shall deliver a notification to the complaining Party of the measures which it has taken or which it envisages to take in order to comply.

ARTICLE 314

Reasonable period of time

1. If immediate compliance is not possible, the respondent Party, no later than 30 days after delivery of the ruling referred to in Article 311(4), shall deliver a notification to the complaining Party of the length of the reasonable period of time it will require for compliance with the ruling referred to in Article 311(4). The Parties shall endeavour to agree on the length of the reasonable period of time to comply.

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 referred to in paragraph 1, request in writing that the original arbitration tribunal determines the length of the reasonable period of time. The arbitration tribunal 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 311(4) 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 315

Compliance review

1. The respondent Party shall, no later than 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 311(4).

2. When the Parties disagree on the existence of, or the consistency with the covered provisions of, any measure taken to comply, the complaining Party may deliver a request, which shall be 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 45 days of the date of delivery of the request.

PUBLIC

ARTICLE 316

Temporary measures

1. The respondent Party shall, at the request of and after consultations with the complaining Party, present an offer for temporary compensation if:

(a) the respondent Party delivers a notification to the complaining Party that it is not possible to comply with the ruling referred to in Article 311; or

(b) the respondent Party fails to deliver a notification of any measure taken to comply within the deadline referred to in Article 313 or before the date of expiry of the reasonable period of time referred to in Article 314; 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. Under any of the circumstances referred to in paragraph 1, 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 or the delivery of the arbitration tribunal decision under Article 315 if a request under paragraph 1 is made.

PUBLIC

The notification shall specify the level of intended suspension of obligations.

3. Obligations under the Protocol on Social Security Coordination or its Annexes may not be suspended under this Article.

4. The suspension of obligations shall not exceed the level equivalent to the nullification or impairment caused by the violation.

5. 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 6.

6. 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 5 to decide on the matter. The arbitration tribunal shall deliver its decision 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 that decision.

7. 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 323;

(b) the Parties have agreed that the measure taken to comply brings the respondent Party into compliance with the covered provisions; or

PUBLIC

(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 respondent Party into compliance with those covered provisions.

PUBLIC

ARTICLE 317

Review of any measure taken to comply
after the adoption of temporary measures

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. 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, the respondent Party may terminate the application of such compensation within 30 days from the 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 compliance 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 4

COMMON PROCEDURAL PROVISIONS

PUBLIC

ARTICLE 318

Receipt of information

1. On request of a Party, or on its own initiative, the arbitration tribunal may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the arbitration tribunal for such information.

2. On request of a Party, or on its own initiative, the arbitration tribunal may seek from any source any information it considers appropriate. The arbitration tribunal may also seek the opinion of experts as it considers appropriate and subject to any terms and conditions agreed by the Parties, where applicable.

3. The arbitration tribunal shall consider amicus curiae submissions from natural persons of a Party or legal persons established in a Party in accordance with Annex 29 on Rules of Procedure.

4. Any information obtained by the arbitration tribunal under this Article shall be made available to the Parties and the Parties may submit comments on that information to the arbitration tribunal.

ARTICLE 319

List of arbitrators

1. The Cooperation Council shall, no later than one year after the date of entry into force of this Agreement, establish a list of individuals with expertise in sectors covered by this Agreement or its supplementing agreements who are willing and able to serve as members of an arbitration tribunal. The list shall comprise 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 Union;

(b) one sub-list of individuals established on the basis of proposals by the United Kingdom, in respect of Gibraltar; and

(c) one sub-list of individuals who are not nationals of either Party who shall serve as chairperson to the arbitration tribunal.

Each sub-list shall include at least five individuals. The Cooperation Council shall ensure that the list is always maintained at this minimum number of individuals.

2. The list referred to in paragraph 1 shall not comprise persons who are members, officials or other servants of the Union institutions, of the Government of a Member State, or of the Government of the United Kingdom or of Gibraltar.

PUBLIC

ARTICLE 320

Replacement of arbitrators

If during dispute settlement procedures under this Part, an arbitrator is unable to participate, withdraws, or needs to be replaced because that arbitrator does not comply with the requirements of the Code of Conduct, the procedure set out in Article 306 shall apply. The time period for the delivery of the ruling or decision shall be extended for the time necessary for the appointment of the new arbitrator.

PUBLIC

ARTICLE 321

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 on 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 or under any supplementing agreement.

4. For greater certainty, the arbitration tribunal shall have no jurisdiction to determine the legality of a measure alleged to constitute a breach of this Agreement or of any supplementing agreement, under the domestic law of a Party. No finding made by the arbitration tribunal when ruling on a dispute between the Parties shall bind the domestic courts or tribunals of either Party as to the meaning to be given to the domestic law of that Party.

5. Each Party shall make the rulings and decisions of the arbitration tribunal publicly available, subject to the protection of confidential information.

6. The information submitted by the Parties to the arbitration tribunal shall be treated in accordance with the confidentiality rules laid down in Annex 29 on Rules of Procedure.

ARTICLE 322

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 time period for which the work of the arbitration tribunal was suspended.

PUBLIC

ARTICLE 323

Mutually agreed solution

1. The Parties may at any time reach a mutually agreed solution with respect to any dispute referred to in Article 301.

2. If a mutually agreed solution is reached during panel proceedings, the Parties shall jointly notify the agreed solution to the chairperson of the arbitration tribunal. Upon such notification, the arbitration proceedings shall be terminated.

3. The solution may be adopted by means of a decision of the Cooperation Council. Mutually agreed solutions shall be made publicly available. The version disclosed to the public shall not contain any information either Party has designated as confidential.

4. Each Party shall take the measures necessary to implement the mutually agreed solution within the agreed time period.

5. No later than the date of expiry of the agreed time period, the implementing Party shall inform the other Party in writing of any measures thus taken to implement the mutually agreed solution.

ARTICLE 324

Time periods

1. All time periods laid down in this Part shall be counted in days from the day following the act to which they refer.

PUBLIC

2. Any time period referred to in this Part 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 Part, stating the reasons for the proposal.

PUBLIC

ARTICLE 325

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 Annex 29 on Rules of Procedures.

ARTICLE 326

Annexes

1. Dispute settlement procedures set out in this Part shall be governed by the rules of procedure set out in Annex 29 on Rules of Procedure and conducted in accordance with the Annex 30 on Code of Conduct.

2. The Cooperation Council may amend the Annex on the Rules of procedure and the Annex on Code of Conduct.

ARTICLE 327

Special procedures for remedial measures

1. For the purposes of Article 209, this Title applies with the modifications set out in this Article.

2. By way of derogation from Article 306 and Annex 29, if the Parties do not agree on the composition of the arbitration tribunal within two days, the co-chair of the Cooperation Council from the complaining Party shall select, no later than one day after the expiry of the two-day time period, an arbitrator by lot from the sub-list of each Party and the chairperson of the arbitration tribunal by lot from the sub-list of chairpersons established pursuant to Article 319. The co-chair of the Cooperation Council from the complaining Party may delegate such selection by lot of the arbitrator or chairperson. Each individual shall confirm their availability to both Parties within two days from the date on which they were informed of their appointment. The organisational meeting referred to in Rule 10 of Annex 29 shall take place within two days from the establishment of the arbitration tribunal.

3. By way of derogation from Rule 13 of Annex 29, the complaining Party shall deliver its written submission no later than seven days after the date of establishment of the arbitration tribunal. The respondent Party shall deliver its written submission no later than seven days after the date of delivery of the written submission of the complaining Party. The arbitration tribunal shall adjust any other relevant time periods of the dispute settlement procedure as necessary to ensure the timely delivery of the report.

PUBLIC

4. Article 311 does not apply and references to the ruling in this Title shall be read as references to the ruling referred to in Article 209(10).

5. By way of derogation from Article 315, the arbitration tribunal shall deliver its decision to the Parties within 30 days from the date of delivery of the request.

PUBLIC

PART SEVEN

FINAL PROVISIONS

ARTICLE 328

Territorial Scope

This Agreement applies to:

(a) the territories to which the Treaty on the European Union and the Treaty on the Functioning of the European Union are applicable, and under the conditions laid down in those Treaties; and

(b) the territory of Gibraltar.

ARTICLE 329

Relationship with other agreements

1. This Agreement is not a supplementing agreement to the Trade and Cooperation Agreement, as defined in Article 2 (Supplementing agreements) of the Trade and Cooperation Agreement.

2. This Agreement and any supplementing agreement applies without prejudice to any earlier bilateral agreement concerning Gibraltar between the United Kingdom, of the one part, and the Union, of the other part. The Parties reaffirm their obligations to implement any such agreement.

ARTICLE 330

Review

The Parties shall jointly review the implementation of this Agreement and supplementing agreements and any matters related thereto four years after the entry into force of this Agreement and regularly thereafter.

PUBLIC

ARTICLE 331

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 Part Six or a panel of experts under Title I of Part Three. In such cases, the arbitration tribunal shall ensure that confidentiality is fully protected in accordance with Annex 29 on Rules of Procedure.

2. When a Party submits information to the Cooperation Council or to Specialised Committees that is considered confidential under its laws and regulations, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

ARTICLE 332

Classified information and sensitive non-classified information

Nothing in this Agreement or in any supplementing agreement shall be construed as requiring a Party to make available classified information.

The Parties shall agree on handling instructions to ensure the protection of sensitive non classified and classified information and material exchanged between them.

PUBLIC

ARTICLE 333

Integral parts of this Agreement

1. The Protocols, Annexes, Appendices and footnotes to this Agreement shall form an integral part of this Agreement.

2. Each of the Annexes to this Agreement, including its appendices, shall form an integral part of the Part, Title, Chapter or Protocol that refers to that Annex or to which reference is made in that Annex.

ARTICLE 334

Termination

Either Party may terminate this Agreement by written notification through diplomatic channels. This Agreement and any supplementing agreement shall cease to be in force on the first day of the twelfth month following the date of notification.

ARTICLE 335

Authentic texts

This Agreement shall be 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.

PUBLIC

ARTICLE 336

Entry into force and application

1. This Agreement shall enter into force on the first day of the month following that in which both Parties have notified each other that they have completed their respective internal requirements and procedures for establishing their consent to be bound.

2. The Parties may agree to provisionally apply this Agreement from a date prior to the day referred to in paragraph 1, provided that prior to the date from which this Agreement is provisionally applied the Parties have notified each other of the fact that the implementation plan referred to in Article 7 and the administrative arrangements referred to in Articles 29, 33, 38, 55, 56, 251, 260, 265 and SSC.31 are in effect and have been fully implemented, and that the measures described in Article 258 are in place.

3. Provisional application shall cease on the day referred to in paragraph 1.

4. As from the date from which this Agreement is provisionally applied, the Parties shall understand references in this Agreement to "the date of entry into force of this Agreement" or to "the entry into force of this Agreement" as references to the date from which this Agreement is provisionally applied.

5. Titles I to IV of Part Two, Title II of Part Three and Title III of Part Four shall cease to apply as from the day on which the administrative arrangements referred to in Articles 29, 33, 38, 55, 56, 251, 260, 265 and SSC.31 are suspended or terminated in accordance with the provisions thereof. They shall start applying anew as from the day on which the suspension of these administrative arrangements is lifted or on which new administrative arrangements are concluded.

PUBLIC

ANNEX 1

PUBLIC

LIST OF INSTRUMENTS
REFERRED TO IN ARTICLE 11(5) OF THE AGREEMENT

1. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, adopted at Oslo on 18 September 1997;

2. The Arms Trade Treaty, adopted New York, 2 April 2013;

3. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, adopted at Geneva,10 October 1980, and its following Protocols:

   – Protocol I (on Non-Detectable Fragments) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, adopted at Geneva on 10 October 1980;

   – Protocol II (on Mines, Booby-Traps and Other Devices) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, adopted at Geneva on 3 May 1996;

– Protocol III (on Incendiary Weapons) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, adopted at Geneva on 10 October 1980;

– Protocol IV (on Blinding Laser Weapons) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, adopted at Vienna on 13 October 1995;

– Protocol V (on Explosive Remnants of War) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, adopted at Geneva on 28 November 2003.

4. Convention on Cluster Munitions, adopted at Dublin on 30 May 2008.

PUBLIC

ANNEX 2

PUBLIC

LIST OF INSTRUMENTS
REFERRED TO IN ARTICLE 13(1) OF THE AGREEMENT

1. Convention on the Marking of Plastic Explosives for the Purpose of Detection, adopted at Montreal, 1 March 1991;

2. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations at New York on 15 December 1997;

3. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations at New York on 9 December 1999;

4. International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations at New York on 13 April 2005.

ANNEX 3

PUBLIC

LIST OF UNION LAW
REFERRED TO IN ARTICLE 14 OF THE AGREEMENT

1. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

2. Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

3. (2010/625/EU): COMMISSION DECISION of 19 October 2010 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Andorra (notified under document C(2010) 7084);

4. (2003/490/EC): COMMISSION DECISION of 30 June 2003 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Argentina;

5. (2002/2/EC): Commission Decision of 20 December 2001 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided by the Canadian Personal Information Protection and Electronic Documents Act (notified under document number C(2001) 4539);

6. (2010/146/EC): Commission Decision of 5 March 2010 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection provided by the Faeroese Act on processing of personal data (notified under document C(2010) 1130);

7. (2003/821/EC): Commission Decision of 21 November 2003 on the adequate protection of personal data in Guernsey (notified under document number C(2003) 4309);

8. (2011/61/EU): Commission Decision of 31 January 2011 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by the State of Israel with regard to automated processing of personal data (notified under document C(2011) 332);

9. (2004/411/EC): COMMISSION DECISION of 28 April 2004 on the adequate protection of personal data in the Isle of Man (notified under document number C(2004) 1556);

10. (2019/304/EU): Commission Implementing Decision (EU) 2019/419 of 23 January 2019 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by Japan under the Act on the Protection of Personal Information (notified under document C(2019) 304);

PUBLIC

11. (2008/393/EC): Commission Decision of 8 May 2008 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Jersey (notified under document number C(2008) 1746);

12. (2013/65/EU): Commission Implementing Decision of 19 December 2012 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by New Zealand (notified under document C(2012) 9557);

13. (2021/9316/EU): Commission Implementing Decision (EU) 2022/254 of 17 December 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the Republic of Korea under the Personal Information Protection Act (notified under document C(2021) 9316);

14. (2000/518/EC): Commission Decision of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Switzerland (notified under document number C(2000) 2304);

15. (2021/4800/EU): Commission Implementing Decision (EU) 2021/1772 of 28 June 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom (notified under document C(2021)4800), as amended by Commission Implementing Decision of 19.12.2025 (notified under document C(2021)4800);

PUBLIC

16. (2021/4801): Commission Implementing Decision (EU) 2021/1773 of 28 June 2021 pursuant to Directive (EU) 2016/680 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom (notified under document C(2021) 4801), as amended by Commission Implementing Decision of 19.12.2025 (notified under document C(2021) 4801);

17. (2023/4745/EU): Commission Implementing Decision EU 2023/1795 of 10 July 2023 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate level of protection of personal data under the EU-US Data Privacy Framework (notified under document C(2023) 4745);

18. (2012/484/EU): Commission Implementing Decision of 21 August 2012 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by the Eastern Republic of Uruguay with regard to automated processing of personal data (notified under document C(2012) 5704);

19. (2025/4626/EU): Commission Implementing Decision (EU) 2025/1382 of 15 July 2025 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the European Patent Organisation (notified under document C(2025) 4626);

20. (2021/3972/EU): Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council.

PUBLIC

ANNEX 4

PUBLIC

LIST OF INSTRUMENTS
REFERRED TO IN ARTICLE 17 OF THE AGREEMENT

CIVIL NUCLEAR COOPERATION

PART 1

1. The Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980 and which entered into force generally on 8 February 1987, and the amendment to that Convention done at Vienna on 8 July 2005 and which entered into force generally on 8 May 2016 ("Amended CPPNM");

2. The Protocol of 12 February 2004 to the Convention on Third Party Liability in the Field of Nuclear Energy concluded at Paris on 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982;

3. Convention on Nuclear Safety, adopted at Vienna on 17 June 1994;

4. Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, adopted at Vienna on 5 September 1997;

5. Convention on the Early Notification of a Nuclear Accident, adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986;

6. Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986.

PUBLIC

PART 2

1. Code of Conduct on the Safety and Security of Radioactive Sources approved by the Board of Governors of the International Atomic Energy Agency on 8 September 2003;

2. Guidance on the management of disused radioactive sources as approved by the Board of Governors of the International Atomic Energy Agency on 8 September 2003 on 11 September 2017;

3. Guidance on the import and export of radioactive sources as revised with the approval of the Board of Governors of the International Atomic Energy Agency on 12 September 2011;

4. Annex C of the Guidelines for Nuclear Transfers set out in IAEA document INFCIRC/254/Part 1 and 2;

5. The recommendations in IAEA INFCIRC/225/Rev.5 (Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities).

ANNEX 5

PUBLIC

CIVIL NUCLEAR COOPERATION – OPERATIONAL ARRANGEMENTS
FOR EARLY NOTIFICATION AND ASSISTANCE
IN CASE OF NUCLEAR ACCIDENTS
AS REFERRED TO IN ARTICLE 17 OF THE AGREEMENT

The existing operational arrangements for the international notification of both civil and defence incidents, including accidents and emergencies of the type contemplated by each of the Convention on Early Notification of a Nuclear Accident adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986 and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986, are currently maintained in the United Kingdom Department for Energy Security and Net Zero (DESNZ) operational response guide. Notification of such an incident in or affecting Gibraltar is part of these arrangements. In summary, should the Royal Navy operational HQ be alerted to an incident of this nature, they will notify the United Kingdom Ministry of Defence (MOD). In turn, MOD will notify the competent authorities of Gibraltar, to enable their emergency plans to be put into action without delay, and DESNZ, providing sufficient information regarding the incident. to enable DESNZ to undertake IAEA notification via the IAEA Unified System for Information Exchange in Incidents and Emergencies (USIE) within two (2) hours of being notified. Similarly, DESNZ will deal with any request for assistance received from Gibraltar via the RANET system or otherwise. Given the cross-border risks in these kinds of accidents, the United Kingdom in respect of Gibraltar commits to establishing a direct reciprocal bilateral channel of notification with Spain.

ANNEX 6

PUBLIC

RULES OF PROCEDURE
OF THE COOPERATION COUNCIL AND SPECIALISED COMMITTEES
REFERRED TO IN ARTICLE 22 AND 23 OF THE AGREEMENT

RULE 1

Chair

1. The Union and the United Kingdom, in respect of Gibraltar, shall notify each other of the name, position and contact details of their respective designated co-chairs. A co-chair is deemed to have the authorisation for representing, respectively, the Union or the United Kingdom until the date a new co-chair has been notified to the other Party.

2. The decisions of the co-chairs provided for by these Rules of Procedure shall be taken by mutual consent.

3. A co-chair may be replaced for a particular meeting by a designee. The co-chair, or the designee, shall notify the other co-chair and the Secretariat of the Cooperation Council of the designation as early as possible. Any reference in these Rules of Procedure to the co-chairs shall be understood to include a designee.

RULE 2

Secretariat

The Secretariat of the Cooperation Council (the "Secretariat") shall be composed of an official of the Union and an official of the Government of the United Kingdom, in respect of Gibraltar. The Secretariat shall perform the tasks conferred on it by these Rules of Procedure. The Union and the United Kingdom, in respect of Gibraltar, shall notify each other of the name, position and contact details of the official who is the member of the Secretariat of the Cooperation Council for the Union and the United Kingdom, in respect of Gibraltar, respectively. This official is deemed to continue acting as member of the Secretariat for the Union or for the United Kingdom, in respect of Gibraltar, until the date either the Union or the United Kingdom, in respect of Gibraltar, has notified a new member.

RULE 3

Meetings

1. Each meeting of the Cooperation Council shall be convened by the Secretariat at a date and time agreed by the co-chairs. Where the Union or the United Kingdom, in respect of Gibraltar, has transmitted a request for a meeting through the Secretariat, the Cooperation Council shall endeavour to meet within 30 days of such request, or sooner in cases provided for in this Agreement.

PUBLIC

2. The Cooperation Council shall hold its meetings alternately in Brussels and London, unless the co-chairs decide otherwise.

3. By way of derogation from paragraph 2, the co-chairs may agree that a meeting of the Cooperation Council be held by videoconference or teleconference.

PUBLIC

RULE 4

Participation in meetings

1. A reasonable period of time in advance of each meeting, the Union and the United Kingdom, in respect of Gibraltar shall inform each other through the Secretariat of the intended composition of their respective delegations and shall specify the name and function of each member of the delegation.

2. Where appropriate the co-chairs may, by mutual consent, invite experts (i.e. non-government officials) to attend meetings of the Cooperation Council in order to provide information on a specific subject and only for the parts of the meeting where such specific subjects are discussed.

RULE 5

Documents

Written documents on which the deliberations of the Cooperation Council are based shall be numbered and circulated to the Union and the United Kingdom, in respect of Gibraltar, by the Secretariat.

PUBLIC

RULE 6

Correspondence

1. The Union and the United Kingdom, in respect of Gibraltar, shall send their correspondence addressed to the Cooperation Council via the Secretariat. Such correspondence may be sent in any form of written communication, including by electronic mail.

2. The Secretariat shall ensure that correspondence addressed to the Cooperation Council is delivered to the co-chairs and is circulated, where appropriate, in accordance with Rule 5.

3. All correspondence from, or addressed directly to, the co-chairs shall be forwarded to the Secretariat and shall be circulated, where appropriate, in accordance with Rule 5.

RULE 7

Agenda for the meetings

1. For each meeting, a draft provisional agenda shall be drawn up by the Secretariat. It shall be transmitted, together with the relevant documents, to the co-chairs no later than ten days before the date of the meeting.

2. The provisional agenda shall include items requested by the Union or the United Kingdom, in respect of Gibraltar. Any such request, together with any relevant document, shall be submitted to the Secretariat no later than 15 days before the beginning of the meeting.

3. The co-chairs shall decide on the provisional agenda for a meeting no later than five days before the date of the meeting.

4. The agenda shall be adopted by the Cooperation Council at the beginning of each meeting. On request by the Union or the United Kingdom, in respect of Gibraltar, other items may be added to the agenda by consensus.

5. The co-chairs may, by mutual consent, reduce or increase the time periods specified in paragraph 1, 2 and 3 in order to take account of the requirements of a particular case.

PUBLIC

RULE 8

Minutes

1. Draft minutes of each meeting shall be drawn up by the official acting as member of the Secretariat of the Party hosting the meeting, within 15 days after the end of the meeting, unless otherwise decided by the co-chairs. The draft minutes shall be transmitted to the member of the Secretariat appointed by the other Party for comments. The latter may submit comments within seven days from the date of receipt of the draft minutes.

2. The minutes shall, as a rule, summarise each item on the agenda, specifying where applicable:

   (a) the documents submitted to the Cooperation Council;

   (b) any statement that one of the co-chairs requested to be entered in the minutes; and

   (c) the decisions taken, recommendations made, statements agreed upon and conclusions adopted on specific items.

3. The minutes shall include as an annex a list of participants setting out the names and functions of all individuals who attended the meeting on behalf of each delegation.

PUBLIC

4. The Secretariat shall adjust the draft minutes on the basis of comments received and the draft minutes, as revised, shall be approved by the co-chairs within 28 days of the date of the meeting, or by any other date agreed by the co-chairs. Once approved, two versions of the minutes shall be authenticated by signature of the members of the Secretariat. The Union and the United Kingdom, in respect of Gibraltar, shall each receive one of these authentic versions. The co-chairs may agree that signing and exchanging electronic copies satisfies this requirement.

PUBLIC

RULE 9

Decisions and recommendations

1. In the period between meetings, the Cooperation Council may adopt decisions or recommendations by written procedure. The text of a draft decision or recommendation shall be presented in writing by a co-chair to the other co-chair in the working language of the Cooperation Council. The other Party shall have one month, or any longer period of time specified by the proposing Party, to express its agreement to the draft decision or recommendation. If the other Party does not express its agreement, the proposed decision or recommendation shall be discussed and may be adopted at the next meeting of the Cooperation Council. The draft decisions or recommendations shall be deemed to be adopted once the other Party expresses its agreement and shall be recorded in the minutes of the next meeting of the Cooperation Council pursuant to Rule 8.

2. Where the Cooperation Council adopts decisions or recommendations, the words "Decision" or "Recommendation", respectively, shall be inserted in the title of such acts. The Secretariat shall record any decision or recommendation under a serial number and with a reference to the date of its adoption.

3. Decisions adopted by the Cooperation Council shall specify the date on which they take effect.

4. Decisions and recommendations adopted by the Cooperation Council shall be established in duplicate in the authentic languages and signed by the co-chairs and shall be sent by the Secretariat to the Union and the United Kingdom, in respect of Gibraltar, immediately after signature. The co-chairs may agree that signing and exchanging electronic copies satisfies the requirement for signature.

RULE 10

Transparency

1. The co-chairs may agree that the Cooperation Council shall meet in public.

2. Each Party may decide on the publication of the decisions and recommendations of the Cooperation Council in its respective official journal or online.

3. If the Union or the United Kingdom, in respect of Gibraltar, submits information that is confidential or protected from disclosure under its laws and regulations to the Cooperation Council, the other party shall treat that information received as confidential.

PUBLIC

4. Provisional agendas of the meetings shall be made public before the meeting of the Cooperation Council takes place. The minutes of the meetings shall be made public following their approval in accordance with Rule 8.

5. Publication of documents referred to in paragraphs 2, 3 and 4 shall be made in compliance with both Parties' applicable data protection rules.

PUBLIC

RULE 11

Languages

1. The official languages of the Cooperation Council shall be the official languages of the Union and the United Kingdom.

2. The working language of the Cooperation Council shall be English. Unless otherwise decided by the co-chairs, the Cooperation Council shall base its deliberations on documents prepared in English.

3. The Cooperation Council shall adopt decisions concerning the amendment or interpretation of this Agreement in the languages of the authentic texts of this Agreement. All other decisions of the Cooperation Council, including those which these Rules of Procedure are amended, shall be adopted in the working language referred to in paragraph 2.

RULE 12

Expenses

1. The Union and the United Kingdom, in respect of Gibraltar, shall each meet any expenses they incur as a result of participating in the meetings of the Cooperation Council.

2. Expenditure in connection with the organisation of meetings and reproduction of documents shall be borne by the party hosting the meeting.

3. Expenditure in connection with interpretation to and from the working language(s) of the Cooperation Council at meetings shall be borne by the party requesting such interpretation.

4. Each Party shall be responsible for the translation of decisions and other documents into its own official language(s), if required pursuant to Rule 11, at its own expenses.

RULE 13

Committees

1. Without prejudice to paragraph 2 of this Rule, Rules 1 to 12 shall apply *mutatis mutandis* to the Committees.

2. The Committees shall inform the Cooperation Council of their meeting schedules and agenda sufficiently in advance of their meetings, and shall report to the Cooperation Council on the results and conclusions of each of their meetings.

PUBLIC

PUBLIC

ANNEX

REFERRED TO IN ARTICLE 29(10) OF THE AGREEMENT

Border crossing point infrastructure at Gibraltar port and airport

1. The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall ensure that the necessary infrastructure for operating border crossing points in accordance with the Schengen Borders Code at Gibraltar port and airport will be in place and maintained. The infrastructure provided shall be appropriate to the volumes of traffic flows at these border crossing points and the need to ensure an efficient, high and uniform level of control at these border crossing points in accordance with the Schengen Borders Code.

2. The infrastructure at these border crossing points shall be compliant with the relevant requirements set out in the Schengen Borders Code and in particular points 2 (air borders) and points 3 (sea borders) of Annex VI so as to allow the competent authorities of the Kingdom of Spain to carry out border checks in conformity with the requirements under the Schengen Borders Code. Appropriate facilities shall be provided to enable the conduct of thorough checks in the Second Line Checks Area. The infrastructure shall also allow for the provision of separate lanes, as prescribed by Article 10 of the Schengen Borders Code and Annex III thereto.

3. The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall, in particular, ensure that the airport operator(s) take the requisite measures to provide the infrastructure to physically separate the flows of passengers on flights to or from Member States applying the Schengen *acquis* in full from the flows of passengers on other flights and to prevent unauthorized persons entering and leaving reserved areas, such as transit areas. Appropriate infrastructure shall be put in place to that end.

4. The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall, in particular, ensure that the port operator(s) take the requisite measures to provide the infrastructure for checks to be carried out in an appropriate area set aside for that purpose in the immediate vicinity of the port, provided the conditions in Article 29(3) are not fulfilled.

Obligation on captains of private flights and masters of ships

5. The United Kingdom, in respect of Gibraltar, shall ensure that the captain of a private flight landing or taking off at Gibraltar airport from or to countries other than Member States applying the Schengen *acquis* in full complies with the obligations laid down in point 2.3 of Annex VI of the Schengen Borders Code, and in particular that prior to take-off, a general declaration comprising inter alia a flight plan in accordance with Annex 2 to the Convention on International Civil Aviation and information concerning the passengers' identity is provide simultaneously and without delay to both the competent authorities of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar.

PUBLIC

6. The United Kingdom, in respect of Gibraltar, shall ensure that for ships, including cruise ships, pleasure boats, ferries and cargo vessels, the master, the ship's agent or some other person duly authorised by the master or authenticated in a manner agreed by the competent authorities of the Kingdom of Spain and of the United Kingdom, in respect of Gibraltar, shall comply with the obligations set out in point 3 of Annex VI to the Schengen Borders Code, in particular the obligation to draw up and submit crew lists and passenger lists, report changes to these lists, and signal the presence of stowaways simultaneously and without delay to both the competent authorities of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar.

PUBLIC

ANNEX 8

PUBLIC

LIST OF CRIMINAL OFFENCES
REFFERED TO IN ARTICLES 55 AND 56 OF THE AGREEMENT

List of criminal offences:

(a) terrorism,

(b) participation in a criminal organisation,

(c) murder and grievous bodily injury,

(d) manslaughter,

(e) organised or armed robbery,

(f) sexual exploitation of children and child pornography,

(g) rape,

(h) arson,

(i) computer-related crime,

(j) forgery of money,

(k) counterfeiting and piracy of products,

(l) forgery of administrative documents and trafficking therein,

(m) aggravated burglary and robbery and receiving stolen goods,

(n) corruption, including bribery,

(o) fraud,

(p) racketeering and extortion,

(q) swindling,

(r) laundering of the proceeds of crime,

(s) kidnapping, illegal restraint, and hostage taking,

(t) trafficking in human beings,

(u) illicit trade in human organs and tissue,

(v) facilitation of unauthorised entry and residence,

(w) racism and xenophobia,

(x) illicit trafficking in narcotic drugs and psychotropic substances,

(y) illicit trafficking in cultural goods, including antiques and works of art,

(z) illicit trafficking in weapons, munitions and explosives,

PUBLIC

(aa) trafficking in stolen vehicles,

(bb) wilful damage through the use of explosives,

(cc) illicit transportation of toxic and hazardous waste,

(dd) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,

(ee) illicit trafficking in hormonal substances and other growth promoters,

(ff) illicit trafficking in nuclear or radioactive materials,

(gg) crimes falling within the jurisdiction of the International Criminal Court,

(hh) unlawful seizure of aircraft/ships, spacecraft,

(ii) sabotage.

And, in addition the following offences for the purposes of Article 55:

all other criminal offences which may give rise to extradition or surrender and, where compliant with national law, also evading checks from law enforcement authorities.

And, in addition the following offences for the purposes of Article 56:

all other criminal offences which may give rise to extradition or surrender, but also in relation to persons that can lead to the identification or the tracing of such suspected persons.

PUBLIC

ANNEX 9

PUBLIC

LIST OF UNION LAW
REFERRED TO IN ARTICLE 63 OF THE AGREEMENT

For the purposes of Article 63, the following Union Law shall also apply:

1. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence;

2. Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons (codification);

3. Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition;

4. Regulation (EU) No 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors, amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013;

5. Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, as amended.

PUBLIC

ANNEX 10

PUBLIC

FORMS OF CRIME FOR WHICH EUROPOL IS COMPETENT

Forms of crime for which EUROPOL is competent as referred to in Article 75 of the Agreement:

(a) Terrorism;

(b) Organised crime;

(c) Drug trafficking;

(d) Money-laundering activities;

(e) Crime connected with nuclear and radioactive substances;

(f) Immigrant smuggling;

(g) Trafficking in human beings;

(h) Motor vehicle crime;

(i) Murder and grievous bodily injury;

(j) Illicit trade in human organs and tissue;

(k) Kidnapping, illegal restraint and hostage-taking;

(l) Racism and xenophobia;

(m) Robbery and aggravated theft;

(n) Illicit trafficking in cultural goods, including antiquities and works of art;

(o) Swindling and fraud;

(p) Crime against the financial interests of the Union;

(q) Insider dealing and financial market manipulation;

(r) Racketeering and extortion;

(s) Counterfeiting and product piracy;

(t) Forgery of administrative documents and trafficking therein;

(u) Forgery of money and means of payment;

(v) Computer crime;

(w) Corruption;

(x) Illicit trafficking in arms, ammunition and explosives;

PUBLIC

(y) Illicit trafficking in endangered animal species;

(z) Illicit trafficking in endangered plant species and varieties;

(aa) Environmental crime, including ship-source pollution;

(bb) Illicit trafficking in hormonal substances and other growth promoters;

(cc) Sexual abuse and sexual exploitation, including child abuse material and solicitation of children for sexual purposes;

(dd) Genocide, crimes against humanity and war crimes.

PUBLIC

ANNEX 11

PUBLIC

FORMS OF SERIOUS CRIME FOR WHICH EUROJUST IS COMPETENT

Forms of serious crime for which EUROJUST is competent as referred to in Articles 89 and 92 of the Agreement:

(a) Terrorism;

(b) Organised crime;

(c) Drug trafficking;

(d) Money-laundering activities;

(e) Crime connected with nuclear and radioactive substances;

(f) Immigrant smuggling;

(g) Trafficking in human beings;

(h) Motor vehicle crime;

(i) Murder and grievous bodily injury;

(j) Illicit trade in human organs and tissue;

(k) Kidnapping, illegal restraint and hostage taking;

(l) Racism and xenophobia;

(m) Robbery and aggravated theft;

(n) Illicit trafficking in cultural goods, including antiquities and works of art;

(o) Swindling and fraud;

(p) Crime against the financial interests of the Union;

(q) Insider dealing and financial market manipulation;

(r) Racketeering and extortion;

(s) Counterfeiting and product piracy;

(t) Forgery of administrative documents and trafficking therein;

(u) Forgery of money and means of payment;

(v) Computer crime;

(w) Corruption;

(x) Illicit trafficking in arms, ammunition and explosives;

PUBLIC

(y) Illicit trafficking in endangered animal species;

(z) Illicit trafficking in endangered plant species and varieties;

(aa) Environmental crime, including ship source pollution;

(bb) Illicit trafficking in hormonal substances and other growth promoters;

(cc) Sexual abuse and sexual exploitation, including child abuse material and solicitation of children for sexual purposes;

(dd) Genocide, crimes against humanity and war crimes.

PUBLIC

ANNEX 12

PUBLIC

EXCHANGE OF CRIMINAL RECORD INFORMATION – TECHNICAL AND PROCEDURAL SPECIFICATIONS AS REFERRED TO IN ARTICLE 113 OF THE AGREEMENT

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1

Objective

The objective of this Annex is to lay down the necessary procedural and technical provisions for the implementation of Chapter 3 (Exchange of criminal record information) of Title V of Part Two of this Agreement.

ARTICLE 2

Communications network

1. The electronic exchange of information extracted from the criminal record between, on the one side, a Member State and, on the other side, the United Kingdom, in respect of Gibraltar, shall take place using a common communication infrastructure that provides for encrypted communications.

2. The common communication infrastructure shall be the Trans European Services for Telematics between Administrations (TESTA) communications network. Any further developments thereof or any alternative secure network shall ensure that the common communication infrastructure in place continues to fulfil the security requirements adequate for the exchange of criminal record information.

ARTICLE 3

Interconnection software

1. The Member States and the United Kingdom, in respect of Gibraltar shall use a standardised interconnection software enabling the connection of their central authorities to the common communication infrastructure in order to exchange the information extracted from the criminal record with the other central authorities electronically in accordance with the provisions of Chapter 3 (Exchange of criminal record information) of Title V of Part Two of this Agreement and this Annex.

PUBLIC

2. For the Member States, the interconnection software shall be the ECRIS reference implementation software or their national ECRIS implementation software, if necessary adapted for the purposes of information exchange with the United Kingdom, in respect of Gibraltar, as set out in this Agreement.

3. For Gibraltar, the interconnection software shall be the interconnection software developed and maintained by the United Kingdom for the exchange of information extracted from the criminal record between the United Kingdom and the Member States.

4. The United Kingdom, in respect of Gibraltar, shall be responsible for the development and operation of its own interconnection software. For that purpose, at the latest before the entry into force of this Agreement, the United Kingdom, in respect of Gibraltar, shall ensure that its national interconnection software functions in accordance with the protocols and technical specifications established for the ECRIS reference implementation software, and with any further technical requirements established by eu-LISA.

5. The United Kingdom, in respect of Gibraltar, shall also ensure the implementation of any subsequent technical adaptations to its national interconnection software required by any changes to the technical specifications established for the ECRIS reference implementation software, or changes to any further technical requirements established by eu-LISA, without undue delay. To that end, the Union shall ensure that the United Kingdom, in respect of Gibraltar, is informed without undue delay of any planned changes to the technical specifications or requirements and is provided with any information necessary for the United Kingdom, in respect of Gibraltar, to comply with its obligations under this Annex.

PUBLIC

ARTICLE 4

Information to be transmitted in notifications, requests and replies

1. All notifications referred to in Article 109 (Notifications) shall include the following obligatory information:

(a) information on the convicted person (full name, date of birth, place of birth (town and State or territory), gender, nationality and – if applicable – previous name(s));

(b) information on the nature of the conviction (date of conviction, name of the court, date on which the decision became final);

(c) information on the offence giving rise to the conviction (date of the offence underlying the conviction and name or legal classification of the offence as well as reference to the applicable legal provisions); and

(d) information on the contents of the conviction (notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence).

2. The following optional information shall be transmitted in notifications if that information has been entered in the criminal record (points (a) to (d)) or is available to the central authority (points (e) to (h)):

(a) the convicted person's parents' names;

PUBLIC

(b) the reference number of the conviction;

(c) the place of the offence;

(d) disqualifications arising from the conviction;

(e) the convicted person's identity number, or the type and number of the person's identification document;

(f) fingerprints, which have been taken from that person;

(g) if applicable, pseudonym and/or alias(es);

(h) facial image.

In addition, any other information concerning convictions entered in the criminal record may be transmitted.

3. All requests for information referred to in Article 111 (Requests for information) shall be submitted in a standardised electronic format according to the model form set out in Chapter 2 (Forms) of this Annex, in one of the official languages of the requested Member State or of the United Kingdom, in respect of Gibraltar.

PUBLIC

4. All replies to requests referred to in Article 112 (Replies to requests) shall be submitted in a standardised electronic format in accordance with the model form set out in Chapter 2 (Forms) of this Annex, and accompanied by a list of convictions, as provided for by national law. The requested Member State or the United Kingdom, in respect of Gibraltar, shall reply either in one of its official languages or in any other language accepted for the exchange of criminal record information between the United Kingdom and the Member States.

5. The forms in Chapter 2 (Forms) of this Annex referred to in paragraph 3 and 4 shall be the same as the forms for the exchange of criminal record information between the United Kingdom and the Member States. The [Specialised Committee] shall adopt any modifications to the forms in Chapter 2 (Forms) of this Annex referred to in paragraphs 3 and 4 as may be necessary in this respect.

ARTICLE 5

Format of transmission of information

1. When transmitting information in accordance with Article 109 (Notifications) and Article 112 (Replies to requests) relating to the name or legal classification of the offence and to the applicable legal provisions, the Member States and the United Kingdom, in respect of Gibraltar, shall refer to the corresponding code for each of the offences referred to in the transmission, as provided for in the table of offences in Chapter 3 (Standarised format of transmission of information) of this Annex. By way of exception, if the offence does not correspond to any specific sub-category, the "open category" code of the relevant or closest category of offences or, in the absence of the latter, an "other offences" code, shall be used for that particular offence.

PUBLIC

2. The Member States and the United Kingdom, in respect of Gibraltar, may also provide available information relating to the level of completion and the level of participation in the offence and, if applicable, to the existence of total or partial exemption from criminal responsibility, or to recidivism.

3. When transmitting information in accordance with Article 109 (Notifications) and Article 112 (Replies to requests) relating to the contents of the conviction, notably the sentence as well as any supplementary penalties, security measures and subsequent decisions modifying the enforcement of the sentence, the Member States and the United Kingdom, in respect of Gibraltar, shall refer to the corresponding code for each of the penalties and measures referred to in the transmission, as provided for in the table of penalties and measures in Chapter 3 (Standarised format of transmission of information)of this Annex. By way of exception, if the penalty or measure does not correspond to any specific sub-category, the "open category" code of the relevant or closest category of penalties and measures or, in the absence of the latter, an "other penalties and measures" code, shall be used for that particular penalty or measure.

4. The Member States and the United Kingdom, in respect of Gibraltar, shall also provide, if applicable, available information relating to the nature and/or conditions of execution of the penalty or measure imposed as provided for in the table of parameters of Chapter 3 (Standarised format of transmission of information) of this Annex. The parameter "non-criminal ruling" shall be indicated only in cases where information on such a ruling is provided on a voluntary basis by the Member State of nationality of the person concerned or by the United Kingdom, in respect of Gibraltar, if the person is a national of the United Kingdom, when replying to a request for information on convictions.

PUBLIC

5. The following information shall be provided by the Member States and the United Kingdom in respect of Gibraltar, to the Specialised Committee on the Circulation of Persons, with a view in particular to disseminating information to other States:

(a) the list of national offences in each of the categories referred to in the table of offences in Chapter 3 (Standarised format of transmission of information) of this Annex. The list shall include the name or legal classification of the offence and reference to the applicable legal provisions. It may also include a short description of the constitutive elements of the offence;

(b) the list of types of sentences, possible supplementary penalties and security measures and possible subsequent decisions modifying the enforcement of the sentence as defined in national law, in each of the categories referred to in the table of penalties and measures in Chapter 3 (Standarised format of transmission of information) of this Annex. It may also include a short description of the specific penalty or measure.

The lists and descriptions referred to in paragraph 5 shall be regularly updated by the Member States and the United Kingdom, in respect of Gibraltar. Updated information shall be sent to the Specialised Committee on the Circulation of Persons.

6. The tables in Chapter 3 (Standarised format of transmission of information) of this Annex referred to in paragraphs 1 to 4 shall be kept the same as the tables for the exchange of criminal record information between the Member States and the United Kingdom. The Specialised Committee on Circulation of Persons shall adopt any modifications to the tables in Chapter 3 (Standarised format of transmission of information) of this Annex referred to in paragraphs 1 to 5 as may be necessary in this respect.

PUBLIC

ARTICLE 6

Continuity of transmission

If the electronic mode of transmission of information is temporarily not available, the Member States and the United Kingdom, in respect of Gibraltar, shall transmit information by any means capable of producing a written record under conditions allowing the central authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, to establish the authenticity thereof, for the entire period of such unavailability.

PUBLIC

ARTICLE 7

Technical specifications

The Member States and the United Kingdom, in respect of Gibraltar, shall observe common technical specifications on the electronic exchange of information extracted from the criminal record as provided by eu-LISA in the implementation of this Agreement and shall adapt their systems as appropriate without undue delay.

CHAPTER 2

FORMS

PUBLIC

Request for information extracted from the criminal record

(a) Information on the requesting Member State or the United Kingdom, in respect of Gibraltar:

State:
Central authority(ies):
Contact person:
Telephone (with STD code):
Fax (with STD code):
E-mail address:
Correspondence address:
File reference, if known:

(b) Information on the identity of the person concerned by the request([1]):

Full name (forenames and all surnames)
Previous names:
Pseudonym and/or alias, if any:
Gender: M ☐ F ☐
Nationality:
Date of birth (in figures: dd/mm/yyyy):
Place of birth (town and State):
Father's name:
Mother's name:
Residence or known address:
Person's identity number or type and number of the person's identification document:
Fingerprints:
Facial image:
Other available identification information:

PUBLIC

(c) Purpose of the request:

(1)	☐	criminal proceedings (please identify the authority before which the proceedings are pending and, if available, the case reference number) … …	
(2)	☐	request outside the context of criminal proceedings (please identify the authority before which the proceedings are pending and, if available, the case reference number, while ticking the relevant box):	
		(i) ☐	from a judicial authority … …
		(ii) ☐	from a competent administrative authority … …
		(iii) ☐	from the person concerned for information on own criminal record … …

Please tick the appropriate box

Purpose for which the information is requested:

Requesting authority:

☐	the person concerned does not consent for this information to be divulged (if the person concerned was asked for his or her consent in accordance with the law of the requesting Member State or of the United Kingdom, in respect of Gibraltar).

PUBLIC

Contact person for any further information needed:
Name:
Telephone:
E-mail address:
Other information (e.g. urgency of the request):

PUBLIC

Reply to the request

Information relating to the person concerned

Please tick the appropriate box

The undersigned authority confirms that:	
☐	there is no information on convictions in the criminal record of the person concerned
☐	there is information on convictions entered in the criminal record of the person concerned; a list of convictions is attached
☐	there is other information entered in the criminal record of the person concerned; such information is attached (optional)
☐	there is information on convictions entered in the criminal record of the person concerned but the convicting Member State or the United Kingdom, in respect of Gibraltar, intimated that the information about these convictions may not be retransmitted for any purposes other than that of criminal proceedings. The request for more information may be sent directly to … (please indicate the convicting Member State or the United Kingdom, in respect of Gibraltar)
☐	in accordance with the national law of the requested Member State or of the United Kingdom, in respect of Gibraltar, requests made for any purposes other than that of criminal proceedings may not be dealt with.

Contact person for any further information needed:
Name:
Telephone:
E-mail address:
Other information (limitations of use of the data concerning requests outside the context of criminal proceedings):
Please indicate the number of pages attached to the reply form:
Done at
on
Signature and official stamp (if appropriate):
Name and position/organisation:

PUBLIC

If appropriate, please attach a list of convictions and send the complete package to the requesting Member State or to the United Kingdom, in respect of Gibraltar. It is not necessary to translate the form or the list into the language of the requesting Member State or of the United Kingdom, in respect of Gibraltar.

([1]) To facilitate the identification of the person as much information as possible is to be provided.

CHAPTER 3

STANDARDISED FORMAT OF TRANSMISSION OF INFORMATION

Common table of offences categories, with a table of parameters, referred to in Article 5(1) and (2) of Chapter 1

Code	Categories and sub-categories of offences
0100 00 open category	Crimes within the jurisdiction of the International Criminal Court
0101 00	Genocide
0102 00	Crimes against humanity
0103 00	War crimes
0200 00 open category	Participation in a criminal organisation
0201 00	Directing a criminal organisation
0202 00	Knowingly taking part in the criminal activities of a criminal organisation
0203 00	Knowingly taking part in the non-criminal activities of a criminal organisation
0300 00 open category	Terrorism
0301 00	Directing a terrorist group
0302 00	Knowingly participating in the activities of a terrorist group
0303 00	Financing of terrorism
0304 00	Public provocation to commit a terrorist offence
0305 00	Recruitment or training for terrorism

PUBLIC

Code	Categories and sub-categories of offences
0400 00 open category	Trafficking in human beings
0401 00	Trafficking in human beings for the purposes of labour or services exploitation
0402 00	Trafficking in human beings for the purposes of the exploitation of the prostitution of others or other forms of sexual exploitation
0403 00	Trafficking in human beings for the purposes of organ or human tissue removal
0404 00	Trafficking in human beings for the purposes of slavery, practices similar to slavery or servitude
0405 00	Trafficking in human beings for the purposes of labour or services exploitation of a minor
0406 00	Trafficking in human beings for the purposes of the exploitation of the prostitution of minors or other forms of their sexual exploitation
0407 00	Trafficking in human beings for the purposes of organ or human tissue removal of a minor
0408 00	Trafficking in human beings for the purposes of slavery, practices similar to slavery or servitude of a minor
0500 00 open category	Illicit trafficking([1]) and other offences related to weapons, firearms, their parts and components, ammunition and explosives
0501 00	Illicit manufacturing of weapons, firearms, their parts and components, ammunition and explosives
0502 00	Illicit trafficking of weapons, firearms, their parts and components ammunition and explosives at national level([2])
0503 00	Illicit exportation or importation of weapons, firearms, their parts and components, ammunition and explosives
0504 00	Unauthorised possession or use of weapons, firearms, their parts and components, ammunition and explosives

PUBLIC

Code	Categories and sub-categories of offences
0600 00 open category	Environmental crime
0601 00	Destroying or damaging protected fauna and flora species
0602 00	Unlawful discharges of polluting substances or ionising radiation into air, soil or water
0603 00	Offences related to waste, including hazardous waste
0604 00	Offences related to illicit trafficking([1]) in protected fauna and flora species or parts thereof
0605 00	Unintentional environmental offences
0700 00 open category	Offences related to drugs or precursors, and other offences against public health
0701 00	Offences related to illicit trafficking([3]) in narcotic drugs, psychotropic substances and precursors not exclusively for own personal consumption
0702 00	Illicit consumption of drugs and their acquisition, possession, manufacture or production exclusively for own personal consumption
0703 00	Aiding or inciting others to use narcotic drugs or psychotropic substances illicitly
0704 00	Manufacture or production of narcotic drugs not exclusively for personal consumption
0800 00 open category	Crimes against the person
0801 00	Intentional killing
0802 00	Aggravated cases of intentional killing([4])
0803 00	Unintentional killing
0804 00	Intentional killing of a new-born by his/her mother
0805 00	Illegal abortion

PUBLIC

Code	Categories and sub-categories of offences
0806 00	Illegal euthanasia
0807 00	Offences related to committing suicide
0808 00	Violence causing death
0809 00	Causing grievous bodily injury, disfigurement or permanent disability
0810 00	Unintentionally causing grievous bodily injury, disfigurement or permanent disability
0811 00	Causing minor bodily injury
0812 00	Unintentionally causing minor bodily injury
0813 00	Exposing to danger of loss of life or grievous bodily injury
0814 00	Torture
0815 00	Failure to offer aid or assistance
0816 00	Offences related to organ or tissue removal without authorisation or consent
0817 00	Offences related to illicit trafficking([3]) in human organs and tissue
0818 00	Domestic violence or threat
0900 00 open category	Offences against personal liberty, dignity and other protected interests, including racism and xenophobia
0901 00	Kidnapping, kidnapping for ransom, illegal restraint
0902 00	Unlawful arrest or deprivation of liberty by public authority
0903 00	Hostage-taking
0904 00	Unlawful seizure of an aircraft or ship
0905 00	Insults, slander, defamation, contempt
0906 00	Threats
0907 00	Duress, pressure, stalking, harassment or aggression of a psychological or emotional nature
0908 00	Extortion

PUBLIC

Code	Categories and sub-categories of offences
0909 00	Aggravated extortion
0910 00	Illegal entry into private property
0911 00	Invasion of privacy other than illegal entry into private property
0912 00	Offences against protection of personal data
0913 00	Illegal interception of data or communication
0914 00	Discrimination on grounds of gender, race, sexual orientation, religion or ethnic origin
0915 00	Public incitement to racial discrimination
0916 00	Public incitement to racial hatred
0917 00	Blackmail
1000 00 open category	Sexual offences
1001 00	Rape
1002 00	Aggravated rape([5]) other than rape of a minor
1003 00	Sexual assault
1004 00	Procuring for prostitution or sexual act
1005 00	Indecent exposure
1006 00	Sexual harassment
1007 00	Soliciting by a prostitute
1008 00	Sexual exploitation of children
1009 00	Offences related to child pornography or indecent images of minors
1010 00	Rape of a minor
1011 00	Sexual assault of a minor

PUBLIC

Code	Categories and sub-categories of offences
1100 00 open category	Offences against family law
1101 00	Illicit sexual relations between close family members
1102 00	Polygamy
1103 00	Evading the alimony or maintenance obligation
1104 00	Neglect or desertion of a minor or a disabled person
1105 00	Failure to comply with an order to produce a minor or removal of a minor
1200 00 open category	Offences against the State, public order, course of justice or public officials
1201 00	Espionage
1202 00	High treason
1203 00	Offences related to elections and referendum
1204 00	Attempt against life or health of the Head of State
1205 00	Insult of the State, Nation or State symbols
1206 00	Insult or resistance to a representative of public authority
1207 00	Extortion, duress, pressure towards a representative of public authority
1208 00	Assault or threat on a representative of public authority
1209 00	Public order offences, breach of the public peace
1210 00	Violence during sports events
1211 00	Theft of public or administrative documents
1212 00	Obstructing or perverting the course of justice, making false allegations in the course of criminal or judicial proceedings, perjury
1213 00	Unlawful impersonation of a person or an authority
1214 00	Escape from lawful custody

PUBLIC

Code	Categories and sub-categories of offences
1300 00 open category	Offences against public property or public interests
1301 00	Public, social security or family benefit fraud
1302 00	Fraud affecting European benefits or allowances
1303 00	Offences related to illegal gambling
1304 00	Obstructing of public tender procedures
1305 00	Active or passive corruption of a civil servant, a person holding public office or public authority
1306 00	Embezzlement, misappropriation or other diversion of property by a public official
1307 00	Abuse of a function by a public official
1400 00 open category	Tax and customs offences
1401 00	Tax offences
1402 00	Customs offences
1500 00 open category	Economic and trade related offences
1501 00	Bankruptcy or fraudulent insolvency
1502 00	Breach of accounting regulation, embezzlement, concealment of assets or unlawful increase in a company's liabilities
1503 00	Violation of competition rules
1504 00	Laundering of proceeds from crime
1505 00	Active or passive corruption in the private sector
1506 00	Revealing a secret or breaching an obligation of secrecy
1507 00	"Insider trading"

PUBLIC

Code	Categories and sub-categories of offences
1600 00 open category	Offences against property or causing damage to goods
1601 00	Unlawful appropriation
1602 00	Unlawful appropriation or diversion of energy
1603 00	Fraud, including swindling
1604 00	Dealing in stolen goods
1605 00	Illicit trafficking([6]) in cultural goods, including antiques and works of art
1606 00	Intentional damage or destruction of property
1607 00	Unintentional damage or destruction of property
1608 00	Sabotage
1609 00	Offences against industrial or intellectual property
1610 00	Arson
1611 00	Arson causing death or injury to persons
1612 00	Forest arson
1700 00 open category	Theft offences
1701 00	Theft
1702 00	Theft after unlawful entry into property
1703 00	Theft, using violence or weapons, or using threat of violence or weapons against person
1704 00	Forms of aggravated theft which do not involve use of violence or weapons, or use of threat of violence or weapons, against persons.

PUBLIC

Code	Categories and sub-categories of offences
1800 00 open category	Offences against information systems and other computer-related crime
1801 00	Illegal access to information systems
1802 00	Illegal system interference
1803 00	Illegal data interference
1804 00	Production, possession, dissemination of or trafficking in computer devices or data enabling commitment of computer-related offences
1900 00 open category	Forgery of means of payment
1901 00	Counterfeiting or forging currency
1902 00	Counterfeiting of non-cash means of payment
1903 00	Counterfeiting or forging public fiduciary documents
1904 00	Putting into circulation/using counterfeited or forged currency, non-cash means of payment or public fiduciary documents
1905 00	Possession of a device for the counterfeiting or forgery of currency or public fiduciary documents
2000 00 open category	Falsification of documents
2001 00	Falsification of a public or administrative document by a private individual
2002 00	Falsification of a document by a civil servant or a public authority
2003 00	Supply or acquisition of a forged public or administrative document; supply or acquisition of a forged document by a civil servant or a public authority
2004 00	Using forged public or administrative documents

PUBLIC

Code	Categories and sub-categories of offences
2005 00	Possession of a device for the falsification of public or administrative documents
2006 00	Forgery of private documents by a private individual
2100 00 open category	Offences against traffic regulations
2101 00	Dangerous driving
2102 00	Driving under the influence of alcohol or narcotic drugs
2103 00	Driving without a licence or while disqualified
2104 00	Failure to stop after a road accident
2105 00	Avoiding a road check
2106 00	Offences related to road transport
2200 00 open category	Offences against labour law
2201 00	Unlawful employment
2202 00	Offences relating to remuneration, including social security contributions
2203 00	Offences relating to working conditions, health and safety at work
2204 00	Offences relating to access to or exercise of a professional activity
2205 00	Offences relating to working hours and rest time
2300 00 open category	Offences against migration law
2301 00	Unauthorised entry or residence
2302 00	Facilitation of unauthorised entry and residence

PUBLIC

Code	Categories and sub-categories of offences
2400 00 open category	Offences against military obligations
2500 00 open category	Offences related to hormonal substances and other growth promoters
2501 00	Illicit importation, exportation or supply of hormonal substances and other grown promoters
2600 00 open category	Offences related to nuclear materials or other hazardous radioactive substances
2601 00	Illicit importation, exportation, supply or acquisition of nuclear or radioactive materials
2700 00 open category	Other offences
2701 00	Other intentional offences
2702 00	Other unintentional offences

PUBLIC

([1]) Unless otherwise specified in this category, "trafficking" means import, export, acquisition, sale, delivery, movement or transfer.
([2]) For the purposes of this sub-category trafficking includes acquisition, sale, delivery, movement or transfer.
([3]) For the purposes of this sub-category trafficking includes import, export, acquisition, sale, delivery, movement or transfer.
([4]) For example: particularly grave circumstances.
([5]) For example rape with particular cruelty.
([6]) Trafficking includes import, export, acquisition, sale, delivery, movement or transfer.

Parameters		
Level of completion:	Completed act	C
	Attempt or preparation	A
	Non-transmitted element	Ø
Level of participation:	Perpetrator	M
	Aider and abettor or instigator/organiser, conspirator	H
	Non-transmitted element	Ø
Exemption from criminal responsibility:	Insanity or diminished responsibility	S
Recidivism		R

Common table of penalties and measures categories, with a table of parameters, referred to in Article 5(3) and (4) of Chapter 1

Code	Categories and sub-categories of penalties and measures
1000 open category	Deprivation of freedom
1001	Imprisonment
1002	Life imprisonment
2000 open category	Restriction of personal freedom
2001	Prohibition from frequenting some places
2002	Restriction to travel abroad
2003	Prohibition to stay in some places
2004	Prohibition from entry to a mass event
2005	Prohibition to enter in contact with certain persons through whatever means
2006	Placement under electronic surveillance([1])

PUBLIC

Code	Categories and sub-categories of penalties and measures
2007	Obligation to report at specified times to a specific authority
2008	Obligation to stay/reside in a certain place
2009	Obligation to be at the place of residence on the set time
2010	Obligation to comply with the probation measures ordered by the court, including the obligation to remain under supervision
3000 open category	Prohibition of a specific right or capacity
3001	Disqualification from function
3002	Loss/suspension of capacity to hold or to be appointed to public office
3003	Loss/suspension of the right to vote or to be elected
3004	Incapacity to contract with public administration
3005	Ineligibility to obtain public subsidies
3006	Cancellation of the driving licence([2])
3007	Suspension of driving licence
3008	Prohibition to drive certain vehicles
3009	Loss/suspension of the parental authority
3010	Loss/suspension of right to be an expert in court proceedings/witness under oath/juror
3011	Loss/suspension of right to be a legal guardian([3])
3012	Loss/suspension of right of decoration or title
3013	Prohibition to exercise professional, commercial or social activity
3014	Prohibition from working or activity with minors
3015	Obligation to close an establishment
3016	Prohibition to hold or to carry weapons
3017	Withdrawal of a hunting/fishing license

PUBLIC

Code	Categories and sub-categories of penalties and measures
3018	Prohibition to issue cheques or to use payment/credit cards
3019	Prohibition to keep animals
3020	Prohibition to possess or use certain items other than weapons
3021	Prohibition to play certain games/sports
4000 open category	Prohibition or expulsion from territory
4001	Prohibition from national territory
4002	Expulsion from national territory
5000 open category	Personal obligation
5001	Submission to medical treatment or other forms of therapy
5002	Submission to a social-educational programme
5003	Obligation to be under the care/control of the family
5004	Educational measures
5005	Socio-judicial probation
5006	Obligation of training/working
5007	Obligation to provide judicial authorities with specific information
5008	Obligation to publish the judgment
5009	Obligation to compensate for the prejudice caused by the offence
6000 open category	Penalty on personal property
6001	Confiscation
6002	Demolition
6003	Restoration

PUBLIC

Code	Categories and sub-categories of penalties and measures
7000 open category	Placing in an institution
7001	Placing in a psychiatric institution
7002	Placing in a detoxification institution
7003	Placing in an educational institution
8000 open category	Financial penalty
8001	Fine
8002	Day-fine([4])
8003	Fine for the benefit of a special recipient([5])
9000 open category	Working penalty
9001	Community service or work
9002	Community service or work accompanied with other restrictive measures
10000 open category	Military penalty
10001	Loss of military rank([6])
10002	Expulsion from professional military service
10003	Military imprisonment
11000 open category	Exemption/deferment of sentence/penalty, warning
12000 open category	Other penalties and measures

PUBLIC

Parameters (to be specified where applicable)	
ø	Penalty
m	Measure
a	Suspended penalty/measure
b	Partially suspended penalty/measure
c	Suspended penalty/measure with probation/supervision
d	Partially suspended penalty/measure with probation/supervision
e	Conversion of penalty/measure
f	Alternative penalty/measure imposed as principal penalty
g	Alternative penalty/measure imposed initially in case of non-respect of the principal penalty
h	Revocation of suspended penalty/measure
i	Subsequent formation of an overall penalty
j	Interruption of enforcement/postponement of the penalty/measure([7])
k	Remission of the penalty
l	Remission of the suspended penalty
n	End of penalty
o	Pardon
p	Amnesty
q	Release on parole (liberation of a person before end of the sentence under certain conditions)
r	Rehabilitation (with or without the deletion of penalty from criminal records)
s	Penalty or measure specific to minors
t	Non-criminal ruling([8])

PUBLIC

(1) Fixed or mobile placement.
(2) Reapplication in order to obtain a new driving licence is necessary.
(3) Legal guardian for a person who is legally incompetent or for a minor.
(4) Fine expressed in daily units.
(5) E.g.: for an institution, association, foundation or a victim.
(6) Military demotion.
(7) Does not lead to avoidance of enforcement of penalty.
(8) This parameter will be indicated only when such information is provided in reply to the request received by the Member State of nationality of the person concerned or by the United Kingdom, in respect of Gibraltar, if the person is a national of the United Kingdom.

PUBLIC

ANNEX 13

PUBLIC

DEFINITION OF TERRORISM

1. Scope

For the purposes of Chapter 3 (Exchange of Criminal Record Information); Article 118(3)(b) and (4) (Surrender – Scope), Article 121 (Surrender – Political offence exception), and Article 176(2)(a) (Freezing and confiscation – Grounds for Refusal) of this Agreement, Annex 14 (Surrender – Arrest Warrant) and Annex 16 (Freezing and Confiscation: Forms), "terrorism" means the offences as defined in paragraphs 3 to 14 of this Annex.

2. Definitions of terrorist group and structured group

2.1. "Terrorist group" means a structured group of more than two persons, established for a period of time and acting in concert to commit terrorist offences.

2.2. "Structured group" means a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

3. Terrorist offences

3.1. Intentional acts, as defined as offences under domestic law, which, given their nature or context may seriously damage a country or an international organisation where committed with one of the aims listed in paragraph 3.2:

(a) attacks upon a person's life which may cause death;

(b) attacks upon the physical integrity of a person;

(c) kidnapping or hostage-taking;

(d) causing extensive destruction to a government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;

(e) seizure of aircraft, ships or other means of public or goods transport;

(f) manufacture, possession, acquisition, transport, supply or use of explosives or weapons, including chemical, biological, radiological or nuclear weapons, as well as research into, and development of, chemical, biological, radiological or nuclear weapons;

(g) release of dangerous substances, or causing fires, floods or explosions, the effect of which is to endanger human life;

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(h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;

(i) seriously hindering or interrupting the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible, intentionally and without right, in cases where:

(i) a significant number of information systems have been affected through the use of a tool designed or adapted primarily for that purpose;

(ii) the offence causes serious damage;

(iii) the offence is committed against a critical infrastructure information system;

(j) deleting, damaging, deteriorating, altering or suppressing computer data on an information system, or rendering such data inaccessible, intentionally and without right, in cases where the offence is committed against a critical infrastructure information system;

(k) threatening to commit any of the acts listed in points (a) to (j).

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3.2. The aims referred to in paragraph 3.1 are:

(a) seriously intimidating a population;

(b) unduly compelling a government or an international organisation to perform or abstain from performing any act;

(c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

4. Offences relating to a terrorist group

The following intentional acts:

(a) directing a terrorist group;

(b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.

5. Public provocation to commit a terrorist offence

The distribution, or otherwise making available by any means, whether online or offline, of a message to the public, with the intent to incite the commission of one of the offences listed in points (a) to (j) of paragraph 3.1 where such conduct, directly or indirectly, such as by the glorification of terrorist acts, advocates the commission of terrorist offences, thereby causing a danger that one or more such offences may be committed when committed intentionally.

PUBLIC

6. Recruitment for terrorism

Soliciting another person to commit or contribute to the commission of one of the offences listed in points (a) to (j) of paragraph 3.1, or in paragraph 4 when committed intentionally.

7. Providing training for terrorism

Providing instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (j) of paragraph 3.1, knowing that the skills provided are intended to be used for this purpose when committed intentionally.

8. Receiving training for terrorism

Receiving instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (j) of paragraph 3.1 when committed intentionally.

PUBLIC

9. Travelling for the purpose of terrorism

9.1. Travelling to a country other than that Member State or the territory of Gibraltar for the purpose of committing, or contributing to the commission of, a terrorist offence as referred to in paragraph 3, for the purpose of the participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group as referred to in paragraph 4, or for the purpose of providing or receiving training for terrorism as referred to in paragraphs 7 and 8 when committed intentionally.

9.2. In addition, the following conduct when committed intentionally:

(a) travelling to a Member State or Gibraltar for the purpose of committing, or contributing to the commission of, a terrorist offence as referred to in paragraph 3, for the purpose of the participation in the activities of a terrorist group with knowledge of the fact that such participation will contribute to the criminal activities of such a group as referred to in paragraph 4, or for the purpose of providing or receiving training for terrorism as referred to in paragraphs 7 and 8; or

(b) preparatory acts undertaken by a person entering that Member State or Gibraltar, as the case may be, with the intention to commit, or contribute to the commission of, a terrorist offence as referred to in paragraph 3.1.

PUBLIC

10. Organising or otherwise facilitating travelling for the purpose of terrorism

Any act of organisation or facilitation that assists any person in travelling for the purpose of terrorism, as referred to in paragraph 9.1 and point (a) of paragraph 9.2, knowing that the assistance thus rendered is for that purpose when committed intentionally

11. Terrorist financing

11.1. Providing or collecting funds, by any means, directly or indirectly, with the intention that they be used, or in the knowledge that they are to be used, in full or in part, to commit, or to contribute to the commission of, any of the offences referred to in paragraphs 3 to 10 when committed intentionally.

11.2. Where the terrorist financing referred to in paragraph 11.1 concerns any of the offences laid down in paragraphs 3, 4 and 9, it shall not be necessary that the funds be in fact used, in full or in part, to commit, or to contribute to the commission of, any of those offences, nor shall it be required that the offender knows for which specific offence or offences the funds are to be used.

12. Other offences related to terrorist activities

The following intentional acts:

(a) aggravated theft with a view to committing one of the offences listed in paragraph 3;

PUBLIC

(b) extortion with a view to committing one of the offences listed in paragraph 3;

(c) drawing up or using false administrative documents with a view to committing one of the offences listed in points (a) to (j) of paragraph 3.1, point (b) of paragraph 4, and paragraph 9.

13. Relationship to terrorist offences

For an offence referred to in paragraphs 4 to 12 to be considered terrorism as referred to in paragraph 1, it shall not be necessary that a terrorist act be actually committed, nor shall it be necessary, insofar as the offences referred to in paragraphs 5 to 10 and 12 are concerned, to establish a link to another specific offence laid down in this Annex.

14. Aiding and abetting, inciting and attempting

The following acts:

(a) aiding and abetting an offence referred to in paragraphs 3 to 8, 11 and 12;

(b) inciting an offence referred to in paragraphs 3 to 12; and

(c) attempting to commit an offence referred to in paragraphs 3, 6 and 7, paragraph 9.1, point (a) of paragraph 9.2, and paragraphs 11 and 12, with the exception of possession as provided for in point (f) of paragraph 3.1 and the offence referred to in point (k) of paragraph 3.1.

PUBLIC

ANNEX 14

PUBLIC

ARREST WARRANT

AS REFERRED TO IN ARTICLE 125 OF THE AGREEMENT

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.[1]

(a)	Information regarding the identity of the requested person:
	Name:
	Forename(s):
	Maiden name, where applicable:
	Aliases, where applicable:
	Sex:
	Nationality:
	Date of birth:
	Place of birth:
	Residence and/or known address:
	Language(s) which the requested person understands (if known):
	Distinctive marks/description of the requested person:
	Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

[1] This warrant must be written in, or translated into, one of the official languages of the executing Member State when that Member State is known, or into any other language accepted by the Member State, as the case may be, or into English when the United Kingdom, in respect of Gibraltar, is the executing actor.

(b)	Decision on which the warrant is based:
1.	Arrest warrant or judicial decision having the same effect:
	Type:
2.	Enforceable judgement:
	Reference:

(c)	Indications on the length of the sentence:
1.	Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):
2.	Length of the custodial sentence or detention order imposed:
	Remaining sentence to be served:

(d)	Indicate if the person appeared in person at the trial resulting in the decision:	
1.	☐	Yes, the person appeared in person at the trial resulting in the decision.
2.	☐	No, the person did not appear in person at the trial resulting in the decision.
3.	If you have ticked the box under point 2, please confirm the existence of one of the following, if applicable:	
	☐	3.1a. the person was summoned in person on … (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;
	OR	
	☐	3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

PUBLIC

OR

☐ 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the Member State or the United Kingdom, in respect of Gibraltar, as the case may be, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

☐ 3.3. the person was served with the decision on … (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she 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

☐ the person expressly stated that he or she does not contest this decision;

OR

☐ the person did not request a retrial or appeal within the applicable timeframe;

OR

☐ 3.4. the person was not personally served with the decision, but

– the person will be personally served with this decision without delay after the surrender; and

– when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she 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

– the person will be informed of the timeframe within which he or she has to request a retrial or appeal, which will be …… days.

4. If you have ticked the box under point 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

……
……

PUBLIC

(e) Offences:

This warrant relates to in total: offences

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

I. The following applies only in case both the issuing Member State or the United Kingdom, in respect of Gibraltar, if it is the issuing actor, and the United Kingdom, in respect of Gibraltar, if it is the executing actor or the executing Member State, have made a notification under Article 118 (Scope) (4) of the Agreement: if applicable, tick one or more of the following offences, as defined by the law of the issuing Member State, or of the United Kingdom, in respect of Gibraltar, when it is the issuing actor, punishable in the issuing Member State or in Gibraltar, where the United Kingdom, in respect of Gibraltar, is the issuing State, by a custodial sentence or detention order for a maximum period of at least three years:

☐ participation in a criminal organisation,

☐ terrorism as defined in Annex.13 to the Agreement,

☐ 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, including bribery,

☐ fraud, including that affecting the financial interests of the United Kingdom, in respect of Gibraltar, of a Member State or of the Union,

☐ laundering of the proceeds of crime,

☐ counterfeiting of currency,

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☐ computer-related crime,

☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,

☐ facilitation of unauthorised 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 or spacecraft,

☐ sabotage.

II. Full descriptions of offence(s) not covered by Section I above:

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(f) Other circumstances relevant to the case (optional information):
(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

(h) The offence(s) on the basis of which this warrant has been issued is (are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

The issuing Member State or the United Kingdom, in respect of Gibraltar, if it is the issuing actor will upon request by the executing Member State or the United Kingdom, in respect of Gibraltar, if it is the executing actor give an assurance that it will:

☐ review the penalty or measure imposed – on request or at least after 20 years,

and/or

☐ encourage the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State or of the United Kingdom, in respect of Gibraltar, if it is the issuing actor, aiming at a non-execution of such penalty or measure.

PUBLIC

(i)	The judicial authority which issued the warrant: Official name: Name of its representative:[1] Post held (title/grade): File reference: Address: Tel. No.: (country code) (area/city code) Fax No. (country code) (area/city code) E-mail: Contact details of the person to contact to make necessary practical arrangements for the surrender:
	Where a central authority has been made responsible for the transmission and administrative reception of arrest warrants: Name of the central authority: Contact person, if applicable (title/grade and name): Address: Tel. No.: (country code) (area/city code) Fax No. (country code) (area/city code) E-mail:

PUBLIC

[1] In the different language versions a reference to the "holder" of the judicial authority will be included.

Signature of the issuing judicial authority and/or its representative:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

PUBLIC

_____

ANNEX 15

PUBLIC

REQUEST FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS

This form shall be used by the competent authorities to which it applies under Article 154 of Chapter MUTUAL ASSISTANCE of the Agreement.

The information provided must be relevant and not go beyond what is necessary to execute this request, in line with relevant data protection requirements.

SECTION A

Case Reference:.....

Requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:.....

Requesting Authority: .....

Requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requested actor:.....

Requested Authority (if known):.....

SECTION B: Urgency

Please indicate if there is any urgency due to:

☐ Evidence being concealed or destroyed

☐ Imminent trial date

☐ A person in custody

☐ Period of statute of limitations expiring

☐ Any other reason

Please specify below:

.....

Time limits for execution of the request are laid down in Article 159 the Agreement. However, if this request is urgent and / or requires action by/on a specific date, please specify and explain the reason for this:.....

.....

SECTION C: Confidentiality

☐ This request is confidential

Please provide additional information where relevant:.....

.....

SECTION D: Relation to an earlier or simultaneous request for assistance

Please identify any actions undertaken in these or related proceedings to seek this evidence via other routes, where applicable. Please indicate whether this request for mutual assistance supplements an earlier or any simultaneous request/requests for assistance to the requested Member State or to the United Kingdom, in respect of Gibraltar, if it was the requested actor, and, if relevant, to another State or the United Kingdom.

☐ Previous engagement with law enforcement authorities, prosecutors or other authorities

Provide details of any prior contact by the requesting Member State or by the United Kingdom, in respect of Gibraltar, if it was the requesting actor, including the name of the State (including, in the case of the United Kingdom, whether addressed to the United Kingdom or to the United Kingdom in respect of Gibraltar), the authority contacted, relevant contact details and any case reference numbers: .....

.....

.....

☐ Previous related or simultaneous request for mutual assistance or European Investigation Order

Provide information relevant to identify the other requests including the name of the State (including, in the case of the United Kingdom, whether addressed to the United Kingdom or to the United Kingdom in respect of Gibraltar), the authority to which it was transmitted, the date of request, and reference numbers given by the requesting and requested authorities:

…….....

……

……

☐ Other

If relevant, provide information related to this other request for assistance:

.....

.....

.....

PUBLIC

SECTION E: Grounds for the request

1. Classification of the offence(s)

To ensure this request is sent to the appropriate body, what is the nature and legal classification of the offence(s) for which the request is made: .....

.....

.....

Please provide the maximum penalty, the statute of limitation and if applicable, the text of the statutory provision/code including the relevant provisions relating to penalties:

.....

.....

2. Summary of the facts

Description of the conduct giving rise to the offence(s) in respect of which assistance is sought and a summary of underlying facts: .....

.....

.....

For service of procedural documents and judicial decisions, please provide a short summary of the document(s) and/or decision(s) to be served, if it is not available in the language of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor: ……..

……

For other requests, please describe how the evidence/measure sought can help to investigate and prosecute the offence(s): .....

.....

PUBLIC

Stage of investigation/proceedings:

☐ investigation

☐ prosecution

☐ trial

☐ other, specify:.....

.....

.....

Description of risks associated with obtaining this evidence, if applicable:.....

.....

.....

Any other information which the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, considers useful to the executing authority in executing the request for assistance, if applicable:…….....

.....

.....

3. Type of proceedings for which the request is issued:

☐ proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Member State or of the United Kingdom, in respect of Gibraltar, if it is the requesting actor.

☐ proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State or of the United Kingdom, in respect of Gibraltar, by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

PUBLIC

SECTION F: Identity of the natural or legal persons concerned

Please only provide information that is relevant and does not go beyond what is necessary for this request. If more than one person is concerned, please provide the information for each person.

1. State all information, as far as known, regarding the identity of the person(s) concerned by the measure:

(i) In the case of natural person(s)

Name: .....

First name(s): .....

Other relevant name(s), if applicable: .....

Aliases, if applicable: .....

Sex: .....

Nationality: .....

Identity number or social security number: .....

Type and number of the identity document(s) (ID card, passport), if available:

.....

Date of birth: .....

Place of birth: .....

Residence and/or known address; if address not known, state the last known address:

.....

Workplace (including contact details): .....

Other contact details (email, phone No): .....

Language(s) which the person understands: .....

Please describe the position the concerned person currently holds in the proceedings:

☐ Suspected or accused person

☐ Victim

☐ Witness

☐ Expert

☐ Third Party

☐ Other (Please specify): .....

PUBLIC

(ii) In the case of legal person(s)

Name: .....

Form of legal person: .....

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat/office: .....

Registration number: .....

Address of the legal person: .....

Other contact details (email, phone No): ……..

Name of the legal person's representative: .....

Please describe the position the concerned person currently holds in the proceedings:

☐ Suspected or accused person

☐ Victim

☐ Witness

☐ Expert

☐ Third Party

☐ Other (Please specify): .....

2. Any other relevant information:

.....

.....

PUBLIC

SECTION G: Measure required

1. Please specify the measure required:

☐ Search and seizure (If ticked section H1 must be completed)

☐ Provision of documents and/or business records

☐ Provision of banking materials or information from other financial institutions (If ticked section H2 must be completed)

☐ Service of procedural documents and judicial decisions with assistance of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor

☐ Obtaining information or evidence which is already in the possession of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor

☐ Obtaining information contained in databases held by police or judicial authorities

☐ Statements and Hearings (If ticked Section F (Identity of the natural or legal persons concerned) and Section I (Formalities and procedures requested for the execution), must be completed):

  ☐ witness

  ☐ expert

  ☐ suspected or accused person

  ☐ victim

  ☐ third party

☐ Hearing by videoconference, telephone conference or other audio-visual transmission. (If ticked section H4 must be completed):

  ☐ witness

  ☐ expert

  ☐ suspected or accused person

  ☐ victim

  ☐ third party

PUBLIC

☐ Obtaining subscriber / entity data (If ticked section H3 must be completed)

☐ Obtaining traffic / events (including location) data (If ticked section H3 must be completed)

☐ Obtaining content data (If ticked section H3 must be completed)

☐ Investigative measure implying the gathering of evidence in real time, continuously and over a certain period of time:

- ☐ monitoring of banking or other financial operations
- ☐ controlled deliveries
- ☐ other (If so please specify): .....

☐ Provisional measure(s) for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests (If ticked section H5 must be completed)

☐ Temporary transfer of a person held in custody to the requesting Member State or to Gibraltar, where the United Kingdom, in respect of Gibraltar, is the requesting actor (If ticked section H6 must be completed)

☐ Temporary transfer of a person held in custody to the requested Member State or to Gibraltar, where the United Kingdom, in respect of Gibraltar, is the requested actor (If ticked section H6 must be completed)

☐ Covert investigation (If ticked section H7 must be completed)

☐ Use of technical recording devices in the territory of a requested Member State or of Gibraltar, where the United Kingdom, in respect of Gibraltar, is the requested actor (if applicable)

☐ Other (If so please specify): .....

.....

.....

2. Please describe the assistance required, and, if known, the locations where the evidence is located/believed to be located and any necessary information needed to carry out this measure. To request any formalities or procedures are observed please see section I: .....

.....

.....

.....

PUBLIC

SECTION H: Additional requirements for certain measures

Fill out the sections relevant to the investigative measure(s) requested:

SECTION H1: Search and seizure

Natural or legal person linked to search. If more than one, please provide the details for each:

.....

.....

Premises to be searched. Please provide details on how the person is linked to the premises. If more than one, please provide the information for each: .....

.....

.....

What evidence is being sought? Identify the material for which you want to search in as much detail as practicable: .....

.....

.....

Why do you believe that the evidence is likely to be found in the place mentioned above and to be relevant and of substantial value to the investigation: .....

.....

.....

Is there any risk of privileged material being recovered? If so, please provide detail:

.....

.....

.....

Will any officials of the requesting territory need to be present at the search? (If yes, please provide details in section I):

☐ Yes

☐ No

Any known information relating to investigations in other territories or states which may impact this search and seizure request: .....

.....

.....

Please provide any other relevant information relating to the search and seizure:

.....

PUBLIC

SECTION H2: Provision of information on bank or other financial accounts

If more than one account is concerned, please provide the information for each account.

Please specify what information is being sought:

☐ Information on bank accounts that the person holds in respect of which he or she has the power of attorney

☐ Information on other financial accounts that the person holds or in respect of which he or she has the power of attorney

☐ Information on banking operations:

- ☐ Bank Statements
- ☐ Account opening documentation
- ☐ Power of Attorney or additional name on account
- ☐ Other (If so please specify): .....

☐ Information on other financial operations:

- ☐ Account Statements
- ☐ Account opening documentation
- ☐ Power of Attorney or additional name on account
- ☐ Other (If so please specify): .....

PUBLIC

If available, please provide:

Name of Account Holder: .....

Name of bank/financial institution:.....

IBAN or Account Number and Sort Code: .....

Time Scale for transactions: .....

☐ Other (If so, please specify):.....

Please provide additional justification as to why this evidence is likely to be relevant and of substantial value to the investigation, including the link of the account to the crime committed: ....

.....

.....

If necessary, please provide any additional information likely to be required to execute this request: .....

.....

PUBLIC

SECTION H3: Subscriber, traffic, location and content data

Type of data requested:

☐ Subscriber / entity data (e.g. subscription to phone number or IP address), specify:.....

.....

☐ Traffic / events data, specify:.....

☐ Location data, specify:.....

☐ Content data (e.g. web/mailbox dump or message log, snapshot), specify:.....

.....

☐ Other, specify:.....

All requests for subscriber, traffic or location, and content data require the following information:

☐ Date (DD/MM/YYYY): .....

☐ Timestamp (hh:mm:ss):.....

☐ Time Zone:.....

Provide further details to help identify the data requested:

☐ IP address (and Port number if applicable):.....

☐ Telephone number(s): .....

☐ IMEI number(s):.....

☐ Other (Please specify):.....

PUBLIC

SECTION H4: Video or telephone conference or other audio-visual transmission

If hearing by videoconference or telephone conference or other audio-visual transmission is requested:

Please indicate the name of the authority that will conduct the hearing (please include name of the person who will conduct the hearing/contact details/language where available): .....

.....

Proposed date(s) (DD/MM/YYYY): .....

Start time of conference (hh:mm:ss): .....

Time Zone: .....

Approximate length of hearing: .....

Technical details:

Site name: .....

Communication system: .....

Contacts of technician (language): .....

Pre-test date and time: .....

Contact details for pre-test operator if known: .....

Language and interpretation arrangements: .....

Any other requirements (If so please specify): .....

.....

.....

.....

PUBLIC

☐ This request concerns an accused person or the suspect and the hearing is, or forms part of, the trial of that person

Reason(s) why it is not desirable or possible for the witness or expert to attend in person (fill in only if applicable):

.....

Please specify if the individual, suspected or accused person has given their consent:

☐ Yes

☐ No

☐ I request that the person's consent is sought before this request proceeds

SECTION H5: Provisional measures

If a provisional measure for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests is requested, please indicate whether:

☐ the item is to be transferred to the requesting Member State or to Gibraltar, where the United Kingdom, in respect of Gibraltar, is the requesting actor

☐ the item is to remain in the requested Member State or in Gibraltar, where the United Kingdom, in respect of Gibraltar, is the requested actor; please indicate an estimated date:

for lifting of provisional measure: .....

for the submission of a subsequent request concerning the item: .....

PUBLIC

SECTION H6: Transfer of a person held in custody

(1) If a temporary transfer to the requesting Member State or to Gibraltar, where the United Kingdom, in respect of Gibraltar, is the requesting actor, of a person held in custody for the purpose of the investigation is requested, please indicate whether the person consented to this measure:

☐ Yes ☐ No ☐ I request that the person's consent is sought

(2) If a temporary transfer to the requested Member State or to Gibraltar, where the United Kingdom, in respect of Gibraltar, is the requested actor, of a person held in custody for the purpose of investigation is requested, please indicate whether the person consented to this measure:

☐ Yes ☐ No

If necessary, please provide any additional information:.....

SECTION H7: Covert Investigations

Please indicate the reasons why you consider the covert investigative measure relevant for the purpose of the criminal proceedings:

.....

.....

.....

Please provide the following information:

(a) Information for the purpose of identifying the subject of the covert investigation:.....

.....

(b) The desired start date and duration of the covert measure: .....

(c) Details of vehicles/address of the covert measure:.....

(d) If necessary, please provide any additional information relevant for execution of this request:

.....

.....

PUBLIC

SECTION I: Formalities and procedures requested for the execution

1. Tick and complete, if applicable

☐ It is requested that the relevant / competent authority of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor, comply with the following formalities and procedures (including any rights/ cautions/warnings that need to be communicated to the person):.....

.....

2. Tick and complete, if applicable

☐ It is requested that one or several officials of the requesting Member State or of the United Kingdom, in respect of Gibraltar, if it is the requesting actor, is present during the execution of the request in support of the competent authorities of the requested Member State or of the United Kingdom, in respect of Gibraltar, if it is the requested actor.

Name, job title and contact details of the officials:

.....

.....

Languages that may be used for communication, if different from language indicated in section J:

.....

.....

Nature of assistance to be provided by official(s) of requesting Member State or of the United Kingdom, in respect of Gibraltar, if it is the requesting actor, and/or any further relevant details:

.....

.....

3. Secure transmission of information and/or evidence

Please specify a secure electronic transmission route, if electronic transmission is accepted:

.....

.....

If electronic transmission is not accepted or would be inappropriate in this case, please advise the method of transmission requested:…….....

.....

PUBLIC

SECTION J: Details of the authority which issued the request

1. Name of authority which issued the request: .....

Name of representative/contact point: .....

Address: .....

Tel. No: (country code) (area/city code) .....

E-mail:.....

2. If different from the above, name of the authority conducting criminal investigation:

.....

Name and title of an official conducting criminal investigation:.....

.....

Address: .....

Tel. No: (country code) (area/city code) .....

E-mail:.....

3. Languages in which it is possible to communicate with the requesting authority:

.....

4. If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the transfer of evidence:

Name/Title/Organisation:.....

Address: .....

E-mail: .....

Contact Phone No: .....

PUBLIC

SECTION K: Signature

By signing this form, I certify that:

– the content of the request as set out in this form is accurate and correct,

– this request has been issued by a competent authority,

– the issuing of this request is necessary for the purpose of the proceedings, and

– the investigative measures requested could have been ordered under the same conditions in a similar domestic case, and where applicable the necessary authorisation has been obtained.

Signature of the requesting authority and/or its representative:

Name: .....

Post held: .....

Date: .....

Official stamp (if available):

List of enclosures (if applicable):

.....

.....

PUBLIC

ANNEX 16

PUBLIC

FREEZING AND CONFISCATION FORM

Freezing / Provisional Measures

Request Form

SECTION A Requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:..... Requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:.....
SECTION B: Urgency Grounds for urgency and/or requested date of execution: Time limits for execution of the freezing request are set out in Article 169 (Obligation to take provisional measures) of the Agreement. However, if a shorter or specific time limit is necessary, please provide the date and explain the reason for this:
SECTION C: Relevant persons State all information, as far as known, regarding the identity of the (1) natural or (2) legal person(s) concerned in the freezing request or of the person(s) that owns/own the property that is covered by the freezing request (if more than one person is concerned, please provide the information for each person):

1. Natural person:

   Name:

   First name(s):

   Other relevant name(s), if applicable:

   Aliases, if applicable:

   Sex:

   Nationality:

   Identity number or social security number:

   Type and number of the identity document(s) (ID card, passport), if available:

   Date of birth:

   Place of birth:

   Residence and/or known address; if address not known, state the last known address:

   Language(s) which the person understands:

   Please indicate whether this person has the freezing request directed against him or her or owns the property that is covered by the freezing request:

2. Legal person:

   Name:

   Form of legal person:

   Shortened name, commonly used name or trading name, if applicable:

   Registered seat:

   Registration number:

   Address of the legal person:

   Name of the legal person's representative:

PUBLIC

Please indicate whether this legal person has the freezing request directed against it or owns the property that is covered by the freezing request:

If different from the address above, please give the location where the freezing measure is to be carried out:

3. Third parties:

   (i) Third parties whose rights in relation to the property that is covered by the freezing request are directly prejudiced by the request (identity and grounds), if applicable:

   (ii) In case third parties have had the opportunity to claim rights, attach documents demonstrating that this has been the case.

4. Provide any other information that will assist with the execution of the freezing request:

PUBLIC

SECTION D: Relevant Property

State all information, as far as known, regarding the assets subject of the freezing request. Please provide details of all property and individual items where applicable:

1. If relating to an amount of money:
   (i) Grounds for believing that the person has property/income in the territory of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor
   (ii) Description and location of the property/source of income of that person
   (iii) Exact location of the property/source of income of that person
   (iv) Details of the bank account of that person (if known)
2. If the freezing request concerns specific item(s) of property (or property of equivalent value to such property):
   (i) Grounds for believing that the specific item(s) of property is located in the territory of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor
   (ii) Description and location of the specific item(s) of property
   (iii) Other relevant information
3. Total amount requested for freezing or execution in the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor (in figures and words, indicate currency):

PUBLIC

SECTION E: Grounds for request or issuing freezing order (if applicable)

Summary of the facts:

1. Set out the reasons for the freezing request or why the order has been issued, including a summary of the underlying facts and grounds for freezing, a description of the criminal offence(s) charged, under investigation or subject to proceedings, the stage the investigation or proceedings have reached, the reasons for any risk factors and any other relevant information.

2. Nature and legal classification of the criminal offence(s) in relation to which the freezing request relates or the order was issued and the applicable legal provision(s).

3. The following applies only in the case(s) where notifications have been made under Article 176(2): Grounds for refusal of the Agreement in respect of both the requesting and requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor: if applicable, tick one or more of the following offences, as defined by the law of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, punishable in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor by a custodial sentence or detention order for a maximum period of at least three years. Where the freezing request or order concerns several criminal offences, please indicate numbers in the list of criminal offences below (corresponding to the criminal offences as described under points 1 and 2 above):

   ☐ participation in a criminal organisation

   ☐ terrorism as defined in Annex [X]

   ☐ trafficking in human beings

PUBLIC

- ☐ sexual exploitation of children and child pornography
- ☐ illicit trafficking in narcotic drugs and psychotropic substances
- ☐ illicit trafficking in weapons, munitions and explosives
- ☐ corruption, including bribery
- ☐ fraud, including that affecting the financial interests of the United Kingdom, in respect of Gibraltar, a Member State or the Union
- ☐ laundering of the proceeds of crime
- ☐ counterfeiting currency
- ☐ computer-related crime
- ☐ environmental crime, including illicit trafficking in endangered animal species and endangered plant species and varieties
- ☐ facilitation of unauthorised 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

PUBLIC

☐ 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 or spacecraft

☐ sabotage

4. Any other relevant information (e.g. relation between the property and the criminal offence):

PUBLIC

SECTION F: Confidentiality

☐ Need to maintain the information in the request confidential after execution:

☐ Need for specific formalities at the time of execution:

SECTION G: Requests to more than one Member State or, where the requesting actor is a Member State, to the United Kingdom, in respect of Gibraltar, and one or more Member States

Where a freezing request has been transmitted to more than one Member State or, where the requesting actor is a Member State, to the United Kingdom, in respect of Gibraltar, and one or more Member States, provide the following information:

1. A freezing request has also been transmitted to the following Member States (Member State and authority):

2. Please indicate the reasons for transmitting freezing requests to multiple Member States or, where the requesting actor is a Member State, to the United Kingdom, in respect of Gibraltar, and one or more Member States:

3. Value of assets, if known, in each requested Member State:

4. Please indicate any specific needs:

SECTION H: Relation to earlier freezing requests or orders

If applicable, provide information relevant to identify previous or related freezing requests:

1. Date of request or issue and transmission of order:

2. Authority to which it was transmitted:

3. Reference given by the issuing and executing authorities:

PUBLIC

SECTION I: Confiscation

This freezing request is accompanied by a confiscation order issued in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor (reference number of the confiscation order):

☐ Yes, reference number:

☐ No

The property shall remain frozen in the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor pending the transmission and execution of the confiscation order (estimated date for submission of the confiscation order, if possible):

SECTION J: Legal remedies (if applicable)

Please indicate if a legal remedy can be sought in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor against the issuing of a freezing request/order, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):

PUBLIC

SECTION K: Issuing Authority

If there is a freezing order in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, upon which this freezing request is based, please provide the following details:

1. Type of issuing authority:

   ☐ judge, court, public prosecutor

   ☐ Another competent authority designated by the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor

2. Contact details:

   Official name of the issuing authority:

   Name of its representative:

   Post held (title/grade):

   File no:

   Address:

   Tel. No: (country code) (area/city code)

   Fax No: (country code) (area/city code)

   E-mail:

   Languages in which it is possible to communicate with the issuing authority:

Signature of the issuing authority and/or its representative certifying the content of the Freezing/Provisional Measures Request Form as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

PUBLIC

SECTION L: Validating Authority

Please indicate the type of authority which has validated the Freezing/Provisional Measures Request Form, if applicable:

☐ judge, court, public prosecutor

☐ another competent authority designated by the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor

Official name of the validating authority:

Name of its representative:

Post held (title/grade):

File no:

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

Languages in which it is possible to communicate with the competent authority:

PUBLIC

SECTION M: Central Authority

Please indicate the central authority responsible for the administrative transmission and receipt of freezing requests in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:

Official name of the central authority:

Name of its representative:

Post held (title/grade):

File no:

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

Languages in which it is possible to communicate with the competent authority:

PUBLIC

SECTION N: Further information

1. Please indicate if the main contact point in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor should be the:

   ☐ issuing authority

   ☐ competent authority

   ☐ central authority

2. If different from above, please provide the contact details of the person(s) to contact for additional information regarding this freezing request:

   Name/Title/Organisation:

   Address:

   E-mail/Contact Phone No:

Signature of the issuing authority and/or its representative certifying the content of the Freezing/Provisional Measures Request Form as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

SECTION O: Annexes

The original or duly authenticated copy of the freezing order must be provided with the Freezing/Provisional Measures Request Form if a freezing order has been issued in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor.

PUBLIC

PUBLIC

SECTION A

Requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:.....

Requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:.....

SECTION B: Confiscation order

Date of issue:.....

Date order became final: .....

Reference number: .....

Total amount of order in figures and words, indicate currency

Amount requested for execution in requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, or if specific type(s) of property, description and location of property

Please provide details of the court findings in relation to the confiscation order:

☐ property is the proceeds of an offence, or equivalent to the full or part of the value of such proceeds

☐ property constitutes instrumentalities of such an offence

☐ property is liable to extended confiscation

☐ property is subject to confiscation under any other provisions relating to powers of confiscation, including confiscation without a final conviction, under the law of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor following proceedings in relation to a criminal offence

SECTION C: Affected persons

State all information, as far as known, regarding the identity of the (1) natural or (2) legal person(s) affected by the confiscation request (if more than one person is concerned, please provide the information for each person):

1. Natural person:

   Name:

   First name(s):

   Other relevant name(s), if applicable:

   Aliases, if applicable:

   Sex:

   Nationality:

   Identity number or social security number:

   Type and number of the identity document(s) (ID card, passport), if available:

   Date of birth:

   Place of birth:

   Residence and/or known address; if address not known, state the last known address:

   Language(s) which the person understands:

   Please indicate whether this person has the confiscation request directed against him or her or owns the property that is covered by the confiscation request:

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2. Legal person:

   Name:

   Form of legal person:

   Shortened name, commonly used name or trading name, if applicable:

   Registered seat:

   Registration number:

   Address of the legal person:

   Name of the legal person's representative:

   If different from the address above, please give the location where the confiscation request is to be carried out:

3. Third parties:

   (i) Third parties whose rights in relation to the property that is covered by the confiscation request are directly prejudiced by the request (identity and grounds), if known/applicable:

   (ii) In case third parties have had the opportunity to claim rights, attach documents demonstrating that this has been the case.

4. Provide any other information that will assist with the execution of the confiscation request:

PUBLIC

SECTION D: Affected Property

State all information, as far as known, regarding the assets subject to the confiscation. Please provide details of all property and individual items where applicable:

1. If relating to amount of money:

   (i) Grounds for believing that the person has property/income in the territory of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:

   (ii) Description and location of the property/source of income:

2. If the request concerns specific item(s) of property:

   (i) Grounds for believing that the specific item(s) of property is/are located in the territory of the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:

   (ii) Description and location of the specific item(s) of property:

3. Value of property:

   (i) Total amount of request (approximate amount):

   (ii) Total amount requested for execution in the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor (approximate amount):

   (iii) If specific type(s) of property, description and location of property:

PUBLIC

SECTION E: Grounds for confiscation

Summary of the facts:

1. Set out the reasons why a confiscation order has been issued, including a summary of the underlying facts and grounds for confiscation, a description of offences, the reasons for any risk factors and any other relevant information (such as date, place and circumstances of the offence):

2. Nature and legal classification of the offence(s) in relation to which the confiscation order was issued and the applicable legal provision(s):

3. The following applies only in the case where notifications have been made under Article 176(2): Grounds for refusal of the Agreement in respect of both the requesting and requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor: if applicable, tick one or more of the following offences, as defined by the law of the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor, punishable in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor by a custodial sentence or detention order for a maximum period of at least three years. Where the confiscation order concerns several criminal offences, please indicate numbers in the list of criminal offences below (corresponding to the criminal offences as described under points 1 and 2 above):

   ☐ participation in a criminal organisation

   ☐ terrorism as defined in Annex [X]

   ☐ trafficking in human beings

PUBLIC

- ☐ sexual exploitation of children and child pornography
- ☐ illicit trafficking in narcotic drugs and psychotropic substances
- ☐ illicit trafficking in weapons, munitions and explosives
- ☐ corruption, including bribery
- ☐ fraud, including that affecting the financial interests of the United Kingdom, in respect of Gibraltar, a Member State or the Union
- ☐ laundering of the proceeds of crime
- ☐ counterfeiting currency
- ☐ computer-related crime
- ☐ environmental crime, including illicit trafficking in endangered animal species and endangered plant species and varieties
- ☐ facilitation of unauthorised 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

PUBLIC

☐ 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 or spacecraft

☐ sabotage

4. Any other relevant information (e.g. relation between the property and the criminal offence):

SECTION F: Confidentiality

☐ Need to maintain the information in the request or part of it confidential

Please indicate any relevant information:

PUBLIC

SECTION G: Requests to more than one Member State or to the United Kingdom, in respect of Gibraltar, and one or more Member States

Where a confiscation request has been transmitted to more than one Member State or, where the requesting actor is a Member State, to the United Kingdom, in respect of Gibraltar, and one or more Member States, provide the following information:

1. A confiscation request has also been transmitted to the following Member States (State and authority):

2. Reasons for transmitting confiscation request to multiple Member States or to the United Kingdom, in respect of Gibraltar, and one or more Member States (select appropriate reasons):

   (i) If a request concerns specific items of property:

   ☐ Different items of property covered by the request are believed to be located in different Member States or in the United Kingdom, in respect of Gibraltar, and one or more Member States

   ☐ The confiscation request relates to a specific item of property and requires action in more than one Member States or in the United Kingdom, in respect of Gibraltar, and one or more Member States

   (ii) If the confiscation request concerns an amount of money:

   ☐ The estimated value of the property which may be confiscated in the requesting party and in any one requested Member States or in the United Kingdom, in respect of Gibraltar, is not likely to be sufficient to cover the full amount set out in the order

   ☐ Other specific needs:

PUBLIC

3. Value of assets, if known, in each requested Member States, or, where the requesting actor is a Member State, in the United Kingdom, in respect of Gibraltar, and each requested Member State:

4. If confiscation of the specific item(s) of property requires action in more than one Member States or in the United Kingdom, in respect of Gibraltar, and one or more Member States, description of the action to be taken in the requested State or in the United Kingdom, in respect of Gibraltar:

SECTION H: Conversion and transfer of property

1. If the confiscation request concerns a specific item of property, confirm whether the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor allows for the confiscation in the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor to take the form of a requirement to pay a sum of money corresponding to the value of the property:

   ☐ Yes

   ☐ No

2. If the confiscation concerns an amount of money, state whether property, other than money obtained from the execution of the confiscation request, may be transferred to the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:

   ☐ Yes

   ☐ No

PUBLIC

SECTION I: Imprisonment in default or other measures restricting the liberty of a person

Please indicate whether the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor allows for the application by the requested Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor of imprisonment in default or other measures restricting the liberty of a person where it is not possible to execute the confiscation request, either wholly or partially:

☐ Yes

☐ No

SECTION J: Restitution or victim compensation

1. Please indicate, where relevant:

☐ An issuing authority or another competent authority in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor has issued a decision to compensate the victim with, or restitute to the victim, the following sum of money:

☐ An issuing authority or another competent authority in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor has issued a decision to restitute the following property other than money to the victim:

2. Details of the decision to restitute property to, or compensate, the victim:

Issuing authority (official name):

Date of the decision:

Reference number of the decision (if available):

Description of the property to be restituted or amount awarded in compensation:

Name of the victim:

Address of the victim:

PUBLIC

SECTION K: Legal remedies

Please indicate if a legal remedy has already been sought against the issuing of a confiscation order, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):

SECTION L: Issuing Authority

Please provide details on the authority which issued the confiscation request in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:

1. Type of the issuing authority:

   ☐ judge, court, public prosecutor

   ☐ another competent authority designated by the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor

2. Contact details:

   Official name of the issuing authority:

   Name of its representative:

   Post held (title/grade):

   File no:

   Address:

   Tel. No: (country code) (area/city code)

   Fax No: (country code) (area/city code)

   E-mail:

   Languages in which it is possible to communicate with the issuing authority:

Signature of the issuing authority and/or its representative certifying the content of the Confiscation Request Form as accurate and correct:

Name:

Post held (title/grade):

Date:

Official stamp (if available):

PUBLIC

SECTION M: Validating Authority

Please indicate the type of authority which has validated the Confiscation Request Form, if applicable:

☐ judge, court, public prosecutor

☐ another competent authority designated by the issuing Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor

Official name of the validating authority:

Name of its representative:

Post held (title/grade):

File no:

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

Languages in which it is possible to communicate with the competent authority:

PUBLIC

SECTION N: Central Authority

Please indicate the central authority responsible for the administrative transmission and receipt of the Confiscation Request Form in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor:

Official name of the central authority:

Name of its representative:

Post held (title/grade):

File no:

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

Languages in which it is possible to communicate with the competent authority:

PUBLIC

SECTION O: Further information

1. Please indicate if the main contact point in the requesting Member State or the United Kingdom, in respect of Gibraltar, if it is the requesting actor should be the:

   ☐ issuing authority

   ☐ competent authority

   ☐ central authority

2. If different from above, please provide the contact details of the person(s) to contact for additional information regarding this Confiscation Request Form:

   Name / Title / Organisation:

   Address:

   E-mail/Contact Phone No:

SECTION P: Annexes

The original or duly authenticated copy of the confiscation order must be provided with the Confiscation Request Form.

ANNEX 17

PUBLIC

ANTI-MONEY LAUNDERING
AND COUNTER-TERRORIST FINANCING
AS REFERRED TO IN ARTICLE 198 OF THE AGREEMENT

1. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018, Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019, Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 and Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024.

2. Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

3. Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849.

4. Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010.

5. Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849.

PUBLIC

ANNEX 18

STATE AID SUBSTANTIVE RULES
AS REFERRED TO IN ARTICLE 201 OF THE AGREEMENT

Article 19 shall apply to the Union acts listed in this Annex, subject to the following paragraphs.

For the purposes of this Annex, "Union acts" shall also include all guidelines, notices and communications listed in this Annex.

This Annex applies pursuant to Article 201(1).

The Parties note that this Annex contains Union acts on State aid granted by Member States as enforced by the European Commission. As regards State aid granted by the United Kingdom, in respect of Gibraltar, within the scope of Article 201(1), such Union acts shall apply *mutatis mutandis*, including to the substantive assessment of State aid, as well as the enforcement procedures of its independent authority or body.

The relevant guidelines, notices and communications listed in this Annex shall be implemented in Gibraltar in the same manner as in the Union, and the independent authority or body of the United Kingdom, in respect of Gibraltar, shall apply them in the same way as the European Commission.

PUBLIC

The Parties recognise that due to objective constraints resulting from the geographical specificities of Gibraltar, certain Union acts in this Annex may not be immediately relevant for the United Kingdom, in respect of Gibraltar, for example as it may not currently have certain economic activities in its territory, such Union acts are otherwise impossible to be applied, or such Union acts regulate State aid measures that depend on Union legal provisions that do not apply to the United Kingdom, in respect of Gibraltar. The Parties note that the United Kingdom, in respect of Gibraltar, is not required to incorporate such Union acts into its domestic legal system until it has the respective economic activities regulated by those Union acts in its territory or unless it intends to grant aid potentially falling under such Union acts. In any event, its independent authority or body has to pay due regard without delay to the relevant Union acts in this Annex if called upon to assess State aid.

PUBLIC

1.	State Aid Rules in the Treaty on the Functioning of the European Union[1] ("TFEU") Articles 107, 108 and 109 TFEU Article 106 TFEU, insofar as it concerns State aid Article 93 TFEU
2.	Acts referring to the notion of aid Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU (OJ C 262, 19.7.2016, p. 1). Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4). Commission Notice on the application of Articles 87 and 88 of the EC Treaty[2] to State aid in the form of guarantees (OJ C 155, 20.6.2008, p. 10).
3.	Block exemption regulations
3.1	Enabling Regulation Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 TFEU to certain categories of horizontal State aid (OJ L 248, 24.9.2015, p. 1), as amended by Commission Regulation (EU) 2018/1911 of 26 November 2018 (OJ L 311, 7.12.2018, p. 8).

PUBLIC

[1] Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47).

[2] Treaty establishing the European Community (Consolidated version 2002) (OJ C 325, 24.12.2002, p. 33).

3.2 General Block Exemption Regulation

Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1), as amended by:

- Commission Regulation (EU) 2017/1084 of 14 June 2017 (OJ L 156, 20.6.2017, p. 1);
- Commission Regulation (EU) 2020/972 of 2 July 2020 (OJ L 215, 7.7.2020, p. 3);
- Commission Regulation (EU) 2021/452 of 15 March 2021(OJ L 89, 16.3.2021, p. 1);
- Commission Regulation (EU) 2021/1237 of 23 July 2021 (OJ L 270, 29.7.2021, p. 39); and
- Commission Regulation (EU) 2023/1315 of 23 June 2023 (OJ L 167, 30.6.2023, p. 1).

3.3 Sectorial block exemption regulations

– Commission Regulation (EU) 2022/2472 of 14 December 2022 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 TFEU, (OJ L 327, 21.12.2022, p. 1) as amended by Commission Regulation (EU) 2023/2607 of 22 November 2023 (OJ L, 23.11.2023).

– Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) 1191/69 and 1107/70 (OJ L 315, 3.12.2007, p. 1) as amended by Regulation (EU) 2016/2338 of the European Parliament and of the Council of 14 December 2016 (OJ L 345, 2312.2016).

– Communication from the Commission on interpretative guidelines concerning Regulation (EC) 1370/2007 on public passenger transport services by rail and by road (OJ C 92, 29.3.2014, p. 1).

– Commission Decision of 20 December 2011 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 7, 11.1.2012, p. 3).

PUBLIC

3.4 *De minimis* aid regulations

– Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 TFEU to de minimis aid (OJ L, 2023/2831, 15.12.2023); and

– Commission Regulation (EU) (EU) 2023/2832 of 13 December 2023 on the application of Articles 107 and 108 TFEU to de minimis aid granted to undertakings providing services of general economic interest (OJ L, 2023/2832, 15.12.2023).

4. Procedural rules

– Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 TFEU (OJ L 248, 24.9.2015, p. 9);

– Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1) as amended by:

  - Commission Regulation (EC) No 1627/2006 of 24 October 2006 (OJ L 302, 1.11.2006, p. 10);
  - Commission Regulation (EC) No 1935/2006 of 20 December 2006 (OJ L 407, 15.2.2207, p.1);
  - Commission Regulation (EC) No 271/2008 of 30 January 2008 (OJ L 82, 25.3.2008, p. 1);
  - Commission Regulation (EC) No 1147/2008 of 31 October 2008 (OJ L 313, 22.11.2008, p.1);
  - Commission Regulation (EC) No 257/2009 of 24 March 2009 (OJ L 81, 27.3.2009, p. 15);
  - Commission Regulation (EC) No 1125/2009 of 23 November 2009 (OJ L 308, 24.11.2009, p. 5);
  - Commission Regulation (EU) No 372/2014 of 9 April 2014 (OJ L 109, 12.4.2014, p. 14);
  - Commission Regulation (EU) 2015/2282 of 27 November 2015 (OJ L 325, 10.12.2015, p. 1);

- Commission Regulation (EU) 2016/246 of 3 February 2016 (OJ L 51, 26.2.2016, p. 1);
- Commission Regulation (EU) 2016/2105 of 1 December 2016 (OJ L 327, 2.12.2016, p. 19);
- Commission Regulation (EU) 2025/905 of 12 May 2025 (OJ L, 2025/905, 13.6.2025, p. 1);
- Commission Notice on the recovery of unlawful and incompatible State aid – C/2019/5396 (OJ C 247, 23.07.2019, p. 1);
- Commission notice on the determination of the applicable rules for the assessment of unlawful State aid (OJ C 119, 22.5.2002, p. 22);
- Commission notice on the enforcement of State aid rules by national courts (OJ C 305, 30.7.2021, p. 1);
- Communication from the Commission on the revision of the method for setting the reference and discount rates (OJ C 14, 19.1.2008, p. 6);
- Communication from the Commission - Code of Best Practice for the conduct of State aid control procedures (OJ C, C/2025/2810, 13.6.2025, p. 1); and
- Commission Communication C (2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6).

5. Compatibility rules

5.1 Important Projects of Common European Interest

– Communication from the Commission – Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (OJ C 528, 30.12.2021, p. 10).

5.2 Agricultural aid

– Communication from the Commission - Guidelines for State aid in the agricultural and forestry sectors and in rural areas (OJ C 485, 21.12.2022, p. 1).

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5.3	Regional aid – Communication from the Commission - Guidelines on regional State aid (OJ C 153, 29.4.2021, p. 1).
5.4	Research and development and innovation aid – Communication from the Commission Framework for State aid for Research and Development and Innovation (OJ C 414, 28.10.2022, p. 1).
5.5	Risk capital aid – Communication from the Commission – Guidelines on State aid to promote risk finance investments (OJ C 508, 16.12.2021, p. 1).
5.6	Rescue and restructuring aid – Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1), as prolonged by Communication from the Commission amending the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, as regards the period of application (OJ C, C/2023/1212, 29.11.2023).
5.7	Training aid – Communication from the Commission – Criteria for the analysis of the compatibility of State aid for training subject to individual notification (OJ C 188, 11.8.2009, p. 1).
5.8	Employment aid – Communication from the Commission – Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification (OJ C 188, 11.8.2009, p. 6).

PUBLIC

5.9	Temporary rules in response to the economic and financial crisis – Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, (OJ C 10, 15.1.2009, p. 2); – Communication from the Commission on the treatment of impaired assets in the Community banking sector (OJ C 72, 26.3.2009, p. 1); – Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ C 195, 19.8.2009, p. 9); – Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis, (OJ C 329, 7.12.2010, p. 7); – Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, (OJ C 356, 6.12.2011, p. 7); and – Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ C 216, 30.7.2013, p. 1).
5.10	Export credit insurance – Communication from the Commission on the application of Article 107 and 108 TFEU to short-term export credit insurance (OJ C 497, 10.12.2021, p. 5).

PUBLIC

5.11 Energy and environment

5.11.1 Environment and Energy

– Communication from the Commission – Guidelines on State aid for climate, environmental protection and energy 2022 (OJ C 80, 18.2.2022, p. 1);

– Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post 2021 (OJ C 317, 25.09.2020, p. 5).

5.11.2 Electricity (stranded costs)

– Commission Communication relating to the methodology for analysis of State aid linked to stranded costs (Commission letter SG (2001) D/290869 of 6 August 2001).

5.11.3 Clean Industrial Deal

– Commission Communication: Framework for State Aid measures to support the Clean Industrial Deal (Clean Industrial Deal State Aid Framework) (OJ C, C/2025/3602, 4.7.2025).

5.12 Basic industries and manufacturing (steel)

– Communication from the Commission concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty (OJ C 152, 26.6.2002, p. 5).

5.13 Postal services

– Notice from the Commission on the application of the competition rules to the postal sector and on the assessment of certain State measures relating to postal services (OJ C 39, 6.2.1998, p. 2).

PUBLIC

5.14 Transport and Infrastructure – Community guidelines on State aid to maritime transport (OJ C 13, 17.1.2004, p. 3); – Communication from the Commission – Community guidelines on State aid for railway undertakings (OJ C 184, 22.7.2008, p. 13); – Communication from the Commission providing guidance on State aid complementary to Community funding for the launching of the motorways of the sea (OJ C 317, 12.12.2008, p. 10); – Communication from the Commission providing guidance on State aid to ship-management companies (OJ C 132, 11.6.2009, p. 6); – Communication from the Commission – Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).
5.15 Services of general economic interest (SGEI) – Communication from the Commission – European Union framework for State aid in the form of public service compensation (OJ C 8, 11.1.2012, p. 15).
6. Transparency of financial relations between Member States and public undertakings
– Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17) as amended by Commission Directive 2025/1442 of 18 July 2025 (OJ L, 2025/1442, 21.7.2025).
7. SME Definition – Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

PUBLIC

ANNEX 19

PUBLIC

MODALITIES REPLATED TO THE PROOF THAT GOODS SATISFY
THE CONDITIONS OF ARTICLE 242 AND OF ARTICLE 248
IN APPLICATION OF ARTICLE 247(3)

ARTICLE 1

Goods moving from the Union to Gibraltar

1. Goods dispatched to Gibraltar that are in free circulation within the Union in accordance with Article 242 of this Agreement at the moment of their presentation to a designated customs post, shall be moved by land or by sea using the New Computerised Transit System ("NCTS") applying the code T2GI. The transit data of the goods as well as the additional information referred to in paragraph 2 shall be declared in the NCTS at the designated customs post, acting as office of departure, and the goods shall be moved following the transit process to the competent authorities of the United Kingdom, in respect of Gibraltar, acting as office of destination.

By derogation from the first subparagraph, professional equipment as defined in Article 1 of Annex B2 of the Istanbul Convention on Temporary Admission may be moved by land without using the NCTS.

2. For control purposes, a register shall be kept by the designated customs post containing details of all exports bound for Gibraltar, including reference to the commodity codes, quantities and value of goods based on an invoice provided by the holder of the transit procedure, the date of acceptance of the transit declaration, the items of charge, the master reference number (T2GI XXX), and any other data necessary for the calculation of the transaction tax and the excise duty where applicable. This information shall be transmitted on item level to the competent authorities of the United Kingdom, in respect of Gibraltar, for the calculation of the amount of the transaction tax and excise duty due at the moment of presentation of the goods in Gibraltar to the competent authorities of the United Kingdom, in respect of Gibraltar, via the special transit procedure defined in paragraph 1.

3. The special transit procedure shall end at the competent authorities of the United Kingdom, in respect of Gibraltar.

The competent authorities of the United Kingdom, in respect of Gibraltar, using an "arrival advice" message, shall notify the designated customs post that acted as office of departure of the arrival of the goods on the day the goods are presented in Gibraltar at the office of destination and shall forward a "control results" message to the office of departure no later than three working days after the goods are presented at the office of destination together with a proof that the transaction tax and the excise duties, where relevant, have been levied in Gibraltar on the goods, unless the goods are covered by the derogation referred to in paragraph 5. In cases where such a derogation applies, the competent authorities of the United Kingdom, in respect of Gibraltar, shall forward to the office of departure, a message indicating that the goods have been included in a special procedure for tax purposes (warehousing, inward processing or temporary admission) instead of the proof that the transaction tax and the excise duties, where relevant, have been levied in Gibraltar.

PUBLIC

4. Where the messages or the proofs on transaction tax and excise levied, where relevant, are not presented, or where the transit movement could not be discharged, an entry shall be made in the register referred to in paragraph 2 by the designated customs post. In this case, the relevant designated customs post shall treat the movement as an irregular entry and levy the applicable VAT and excise duties in the Member State of the designated customs post. The holder of the transit procedure shall be liable for the relevant amount. This application shall be without prejudice to any corrections, which might prove necessary, for instance, in light of investigations conducted in the context of the transit arrangements or as a result of action undertaken in the context of mutual assistance as laid down in Protocols on mutual administrative assistance in customs matters and on administrative cooperation and combating fraud in the field of value added tax and excise duty and on mutual assistance for the recovery of claims relating to taxes and duties.

5. By derogation from paragraphs 3 and 4, Union goods, for which there is a justified business need to suspend levying of transaction tax and excise duties, where applicable, may benefit from the following exception. Those goods may be released by the competent authorities of the United Kingdom, in respect of Gibraltar, for tax purposes for a warehousing procedure in an authorised customs warehouse in Gibraltar, in the case of a customs warehouse for tax purposes for ship supplies without minimum storage period, otherwise for a period between one month and nine months or for an inward processing procedure or for a temporary admission procedure for a period of up to three months, to take effect simultaneously with the ending of the T2GI transit procedure. In such cases, the competent authorities of the United Kingdom, in respect of Gibraltar, shall supply information on a case by case basis to the designated customs post which acted as office of departure for the T2GI transit procedure regarding goods which have been taken out of the special procedure for tax purposes to be placed on the market in Gibraltar, taken out of Gibraltar under the re-export procedure, or destroyed with no waste remaining.

PUBLIC

6. In addition, in the case of discharging the special procedures for tax purposes by placing the goods on the market in Gibraltar, the competent authorities of the United Kingdom, in respect of Gibraltar, shall supply to the designated customs post, which acted as office of departure for the T2GI transit procedure, on a monthly basis, proof that transaction tax and, if applicable, excise duties, have been levied by the United Kingdom, in respect of Gibraltar, for goods placed on the market in Gibraltar.

In the case of discharging the special procedures for tax purposes by taking the goods out of Gibraltar or destroying them with no waste remaining, the competent authorities of the United Kingdom, in respect of Gibraltar, shall supply to the designated customs post, which acted as office of departure for the T2GI transit procedure, on a case by case basis, proof of their exit from Gibraltar or proof of that destruction.

A period of more than three months for the discharge may be authorised in the case of an inward processing procedure or a temporary admission procedure, at the time the application is made, or by way of extension if there are duly justified circumstances accepted by the designated customs post, which acted as office of departure for the T2GI transit procedure.

PUBLIC

Where the messages or the proofs of discharge are not presented or where the special procedures could not be discharged within the period of nine months (or a longer period authorised in case of inward processing procedure or temporary admission procedure under duly justified circumstances), an entry shall be made in the register referred to in paragraph 2 by the designated customs post. In this case, the competent authorities of the United Kingdom, in respect of Gibraltar, shall transfer to the Member State of the office of departure the amount of the VAT and excise duties applicable at the time of discharge of the transit movement in that Member State.

7. The designated customs posts listed in Appendix 1 of Annex 21 shall be the exit customs office for all exports of goods from the Union into Gibraltar.

Goods which would be eligible for partial relief from import duty according to the Union rules on temporary admission, may be granted full relief from indirect tax by the United Kingdom, in respect of Gibraltar, pursuant to an authorisation for temporary admission granted in accordance with paragraph 5 of this Article.

Professional equipment as defined in Article 1 of Annex B2 of the Istanbul Convention on Temporary Admission may also be placed in the temporary admission procedure by the act of their entry into Gibraltar.

8. Administrative arrangements between the competent authorities within the Union and the competent authorities of the United Kingdom, in respect of Gibraltar, shall set out the practical modalities for the implementation of this Article.

PUBLIC

ARTICLE 2

Goods moving from Gibraltar to the Union

1. Where goods in free circulation in Gibraltar (or goods in a customs warehousing, inward processing or temporary admission procedure for tax purposes) are presented to the competent authorities of the United Kingdom, in respect of Gibraltar, with a view to be moved to the Union, the NCTS shall be used applying the code T2GI. The transit data of the goods shall be declared in the NCTS and the goods shall be moved following the transit process to the designated customs post in the Union acting as office of destination, in order to furnish evidence that the goods in question are in free circulation in Gibraltar.

By derogation from the first subparagraph, professional equipment as defined in Article 1 of Annex B2 of the Istanbul Convention on Temporary Admission may be moved by land without using the NCTS.

2. The procedure of Article 1(3) of this Annex shall apply *mutatis mutandis*. Where the office of departure in Gibraltar has not received the information required to prove that the goods have arrived in a designated customs post, the United Kingdom, in respect of Gibraltar, shall collect the relevant VAT and excise duties applicable in the Member State of the designated customs post and shall transfer the taxes levied to the competent authorities of that Member State. However, in the event, that the competent authorities of the United Kingdom, in respect of Gibraltar, can provide conclusive evidence that the goods under transit have ultimately remained in Gibraltar, transaction tax and, if applicable, Gibraltar excise duties shall be levied instead.

PUBLIC

3. Administrative arrangements between the competent authorities within the Union and the competent authorities of the United Kingdom, in respect of Gibraltar, shall set out the practical modalities for the implementation of paragraph 2.

PUBLIC

ARTICLE 3

Applicable Union law

1. For the purposes of this Annex:

(a) the rules of the Union transit procedure shall apply, including as amended or replaced in future as well as any Union act implementing or supplementing those Union rules;

(b) the United Kingdom, in respect of Gibraltar, shall apply the rules of the Union customs warehousing procedure, inward processing and temporary admission procedures, authorisations and supervision listed below *mutatis mutandis* without prejudice to the special provisions laid down in this Annex, provided that the authorisation does not cover goods referred to in Annex 21. Article 19 of this Agreement shall apply.

2. Guarantee documents and certificates issued in accordance with Articles 1 and 2 of this Annex shall bear the words "Gibraltar".

3. For the purposes of paragraph 1(b), Union law to be applied by the United Kingdom, in respect of Gibraltar, shall cover the following acts:

(a) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code as amended by

(i) Regulation (EU) 2016/2339 of the European Parliament and of the Council of 14 December 2016

(ii) Regulation (EU) 2019/474 of the European Parliament and of the Council of 19 March 2019

(iii) Regulation (EU) 2019/632 of the European Parliament and of the Council of 17 April 2019

(iv) Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022

Corrected by:

Corrigendum, OJ L 287, 29.10.2013, p. 90 (952/2013)

Corrigendum, OJ L 267, 30.9.2016, p. 2 (952/2013)

Definition of a decision: Article 5(39)

PUBLIC

Provision of information to the customs authorities: Article 15

Decisions relating to the application of Customs Decisions: Articles 22 to 32

Appeals: Articles 43 to 45

Keeping of documents and other information: Article 51

Incurrence of a customs debt: Articles 77 to 88

Guarantee for a potential or existing Customs Debt: Articles 88 to 100

Recovery, payment, repayment and remission: Articles 101 to 126

Provisions applying to all customs declarations: Articles 170 to 176

Verification and release of goods: Articles 188 to 194

Disposal of goods: Articles 197 to 200

Special Procedures – General provisions: Articles 210 to 224

Customs warehousing: Articles 237 to 242

Temporary Admission: Articles 250 to 253

Inward Processing: Articles 255 to 258

PUBLIC

(b) Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code as amended by:

(i) Commission Delegated Regulation (EU) 2016/341 of 17 December 2015

(ii) Commission Delegated Regulation (EU) 2016/651 of 5 April 2016

(iii) Commission Delegated Regulation (EU) 2018/1063 of 16 May 2018

(iv) Commission Delegated Regulation (EU) 2018/1118 of 7 June 2018

(v) Commission Delegated Regulation (EU) 2019/841 of 14 March 2019

(vi) Commission Delegated Regulation (EU) 2019/1143 of 14 March 2019

(vii) Commission Delegated Regulation (EU) 2020/877 of 3 April 2020

(viii) Commission Delegated Regulation (EU) 2020/2191 of 20 November 2020

(ix) Commission Delegated Regulation (EU) 2021/234 of 7 December 2020

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(x) Commission Delegated Regulation (EU) 2021/1934 of 30 July 2021

(xi) Commission Delegated Regulation (EU) 2023/398 of 14 December 2022

Corrected by:

Corrigendum, OJ L 087, 2.4.2016, p. 35 (2015/2446)

Corrigendum, OJ L 096, 5.4.2019, p. 55 (2016/341)

Definitions: Articles 1 (2), (3), (4), (12), (17), (23), (29), (30), (32), (33), (36), (41), (42)

Decisions relating to the application of customs legislation: Articles 7a to 18

Incurrence of a customs debt: Articles 72, 74, 76, 79

Guarantee for a potential or existing customs debt: Articles 81 to 84

Notification of the customs debt and claims for payment from guaranteeing association: Articles 87 and 88

Payment of the customs debt: Articles 89 to 91

PUBLIC

Repayment and remission of customs debt: Articles 92 to 97

Extinguishment of a customs debt: Article 103

Provisions applying to all customs declarations: Article 148

Returned goods: Article 158

Special procedures – Application for an authorisation: Articles 161, 162, 164,165,166 to 175, 177, 178 to 180 and 182

Customs Warehousing: Articles 201 to 203

Temporary Admission: Articles 204 to 238

Inward processing: Articles 240, 241

Information to be provided in the bill of discharge: Annex 71-06

PUBLIC

(c) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code as amended by:

(i) Commission Implementing Regulation (EU) 2017/989 of 8 June 2017

(ii) Commission Implementing Regulation (EU) 2018/604 of 18 April 2018

(iii) Commission Implementing Regulation (EU) 2019/1394 of 10 September 2019

(iv) Commission Implementing Regulation (EU) 2020/893 of 29 June 2020

(v) Commission Implementing Regulation (EU) 2020/1727 of 18 November 2020

(vi) Commission Implementing Regulation (EU) 2020/2038 of 10 December 2020

(vii) Commission Implementing Regulation (EU) 2021/235 of 8 February 2021

(viii) Commission Implementing Regulation (EU) 2022/2334 of 29 November 2022

Corrected by:

Corrigendum, OJ L 087, 2.4.2016, p. 35 (2015/2447)

Decisions taken by the customs authorities: Articles 8 to 15

PUBLIC

Customs debt and guarantees: Articles 148 to 158

Recovery, repayment and remission of customs debt: Articles 165, 166, 170, 171, 172 to 181

Placing goods under a customs procedure: Article 221

Verification and release of goods: Articles 238 to 247

Disposal of goods: Articles 248 to 250

Special procedures general provisions for application and decisions for an authorisation: Articles 258 to 271

Temporary Admission: Articles 322 and 232

Inward processing: Articles 324 and 325

PUBLIC

ARTICLE 4

Union goods entering into Gibraltar by sea

In application of Article 247 of this Agreement, Union goods that have been cleared for exit from the Union in the designated customs post in Algeciras may be transported by sea directly from this designated customs post via the shortest route to Gibraltar, arriving within 2 hours from exiting the port under cover of a T2GI transit procedure, as provided in Article 1(1) to 1(7) of this Annex. The ship shall be entirely unloaded in Gibraltar.

ARTICLE 5

Union goods leaving Gibraltar

Union goods which are to be exported from Gibraltar as ship supplies may leave the territory of Gibraltar via the port or airport, provided that they comply with the Union customs and indirect taxation provisions applicable for comparable transactions in the Union. Article 8(1) of Annex 21 applies, with the exception of the presentation of the goods at a designated customs post.

PUBLIC

ANNEX 20

PUBLIC

PROVISIONS OF UNION LAW
REFERRED TO IN ARTICLE 247(1)

1. Union acts and other equivalent legislation as necessary to avoid distortions with the neighbouring region in relation to Article 247(1) shall be applied in the United Kingdom, in respect of Gibraltar. The areas covered are as follows:

   (a) customs legislation as defined in the Union Customs Code, with the exclusion of all tariff quotas, and of tariffs set at a level lower than those contained in the Union's schedule of concessions and commitments on trade in goods, incorporated into the General Agreement on Tariffs and Trade (1994) on the basis of international trade agreements, or by other Union legislation granting unilateral tariff preferences;

   (b) Union acts governing import and export prohibitions and restrictions on grounds of, inter alia, public morality, public policy or public security; the protection of the health and life of humans, animals or plants; the protection of the environment; the protection of national treasures possessing artistic, historic or archaeological value; the protection of industrial or commercial property, including controls on drug precursors, goods infringing certain intellectual property rights and cash; as well as Union acts concerning the implementation of fishery conservation and management measures and the implementation of commercial policy measures, safety and security measures or related to any border formalities and procedures to be controlled and applied by customs authorities;

(c) any other Union acts the implementation of which comes wholly or partly within the jurisdiction of the customs authorities of the Member States;

(d) Union legislation on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the European Commission to ensure the correct application of the law on customs and agricultural matters, as last amended by Regulation (EU) 2015/1525 of the European Parliament and the Council[1];

(e) Union acts setting product rules, requirements and standards applicable in the Union's Single Market, including on tobacco and related products, chemicals, waste and sanitary and phytosanitary measures;

(f) the Treaty establishing the European Atomic Energy Community and the relevant Union acts, which have as a legal base that Treaty;

(g) Union acts governing trade statistics, general trade related aspects, trade defence instruments and bilateral safeguards;

[1] Regulation (EU) 2015/1525 of the European Parliament and of the Council of 9 September 2015 amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ EU L 243, 18.9.2015, p. 1, ELI: http://data.europa.eu/eli/reg/2015/1525/oj).

(h) Union legislation establishing a carbon border adjustment mechanism; and

(i) Union legislation concerning VAT, excise, and administrative cooperation and recovery assistance.

The provisions referred to in this paragraph shall be those applicable at the time in the Union.

2. The provisions referred to in paragraph 1 shall be determined in greater detail by the Cooperation Council.

3. The proper collection of customs duties in Gibraltar shall be considered as part of the protection of the financial interests of the Union.

PUBLIC

ANNEX 21

PUBLIC

PROCEDURE FOR GOODS
ENTERING INTO AND EXPORTED FROM GIBRLATAR
FROM AND TO COUNTRIES AND TERRITORIES
OUTSIDE THE CUSTOMS UNION
IN ACCORDANCE WITH ARTICLE 247(3)

ARTICLE 1

Imports from countries and territories outside the customs union into Gibraltar

1. The Union is authorised to carry out, on behalf of the competent authorities of the United Kingdom, in respect of Gibraltar, customs clearance formalities, necessary for the release for free circulation of non-Union goods presented at a designated customs post, or for the placement of such goods under a customs warehousing, inward processing or temporary admission procedure as defined in Union customs legislation. The Union is also responsible for the authorisation procedure, supervision and remaining aspects of these procedures according to Union customs legislation, including where the authorisation also covers goods referred to in Annex 19. Such customs clearance and authorisation formalities shall be carried out by a designated customs post, except sanitary and phytosanitary related customs clearance formalities which shall be carried out at the first entry point of the Union when required by Union legislation. This is without prejudice to the trading licences and trading authorisations that may need to be granted by the competent authorities of the United Kingdom, in respect of Gibraltar, to economic operators with respect to activities taking place in Gibraltar.

2. The customs clearance formalities shall be carried out in accordance with those provisions of Union law that would apply if the goods were customs cleared in the Union. However, all tariff quotas, and tariffs set at a level lower than those contained in the Union's schedule of concessions and commitments on trade in goods, incorporated into the General Agreement on Tariffs and Trade (1994) on the basis of international trade agreements, or by other Union legislation granting unilateral tariff preferences shall not apply, with the exception of those referred in Appendix 2 of this Annex and under the conditions established in the relevant international agreement.

3. Where import duties are payable on goods pursuant to paragraph 1, those duties shall be levied in the relevant designated customs post on behalf of the United Kingdom, in respect of Gibraltar. The United Kingdom, in respect of Gibraltar, shall not refund these sums directly or indirectly.

4. The import duties shall be entered in the customs accounts within the time-limits laid down by the relevant legislation of the Union.

For control purposes, duties entered in the accounts shall also be recorded in the register, referred to in Article 6(1) of this Annex, containing details of all imports bound for Gibraltar, including reference to the goods imported, the date of acceptance of the import declaration, the items of charge, the amount of duty involved and the master reference number.

5. For the purposes of this Annex, rules of the Union transit procedure shall apply, including as amended or replaced in future as well as any Union act implementing or supplementing those Union rules, without prejudice to the special provisions laid down in this Annex.

PUBLIC

ARTICLE 2

Movements of goods to Gibraltar from designated customs posts of the Union

1. Where goods specified in Article 1 of this Annex and bound for Gibraltar are released for free circulation or for special procedures of customs warehousing, inward processing or temporary admission at one of the designated customs posts, NCTS shall be used thereafter applying the code T1GI. The transit data of the goods as well as the additional information referred to in Article 6 of this Annex shall be declared in the NCTS at the designated customs post, acting as office of departure, and the goods shall be moved following the transit process to the competent authorities of the United Kingdom, in respect of Gibraltar, acting as customs office of destination.

2. The customs office of destination in Gibraltar, using an "arrival advice" message, shall notify the designated customs post that acted as office of departure of the arrival of the goods on the day the goods are presented in Gibraltar at the office of destination and shall forward a "control results" message to the office of departure at the latest on the third working day following the day the goods are presented at the office of destination, together with proof that the transaction tax and the excise duties, where relevant, have been levied in Gibraltar on the goods, unless the goods are covered by the exception referred to in Article 6(3) of this Annex or by a special procedure under paragraph 1 of this Article.

PUBLIC

ARTICLE 3

Collection of import duty and entry into the relevant accounts

1. With regard to the establishment, monitoring and making available of import duty collected on goods destined for Gibraltar, Regulation (EU, Euratom) No 609/2014[1] shall apply *mutatis mutandis*. In particular, the following provisions shall apply:

(a) Member States with designated customs posts shall maintain separate Gibraltar accounts for import duty collected on goods destined for Gibraltar, identical to those provided for as regards the Union's own resources under Article 6(3) of Regulation (EU, Euratom) No 609/2014; and

(b) The import duties relating to the T1GI document shall be established by the designated customs posts in accordance with the applicable Union law and entered in the accounts referred to in point (a).

2. The procedure referred to in paragraph 1 shall apply *mutatis mutandis* to processed products and to goods moved into the territory of Gibraltar for which a customs debt has arisen.

[1] Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (OJ EU L 168, 7.6.2014, p. 39, ELI: http://data.europa.eu/eli/reg/2014/609/oj).

PUBLIC

3. The Member States shall, pursuant to the first subparagraph of Article 6(4) of Regulation (EU, Euratom) No 609/2014, send to the European Commission a statement of their accounts referred to in paragraph 1(a). The statement shall be established in the same way as the statements established for own resources and sent to the European Commission together with those relating to own resources. The statements shall however also indicate the total amount of import duties collected at each designated customs post and a breakdown on transaction level shall be provided to the European Commission on request.

4. The supporting documents shall be kept in accordance with the first and second paragraphs of Article 3 of Regulation (EU, Euratom) No 609/2014. These documents and the other documents relating to own resources shall be filed separately.

5. Corrections to established entitlements or to the accounts made after 31 December of the third year following the year of the initial establishment shall not be entered in the accounts, except on points notified before this date either by the European Commission or by a Member State or by the United Kingdom, in respect of Gibraltar.

6. Article 2 of Council Regulation (EU, Euratom) 2021/768[1] shall apply. The inspection measures in question shall also apply to such documents within the meaning of point (c) of Article 2(3) of that Regulation which prove that the goods have arrived in Gibraltar.

[1] Council Regulation (EU, Euratom) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union and repealing Regulation (EU, Euratom) No 608/2014 (OJ EU L 165, 11.5.2021, p. 1, ELI: http://data.europa.eu/eli/reg/2021/768/oj).

7. Member States shall credit to the European Commission's account provided for in Article 9 of Regulation (EU, Euratom) No 609/2014, within the time limits indicated in Article 10(1) of that Regulation, the entitlements entered in the accounts in accordance with paragraph 1(a). Member States shall retain, by way of collection costs, a percentage of the import duties collected on behalf of the United Kingdom, in respect of Gibraltar, in accordance with the applicable retention rate in the Union.

8. The Member States shall be released from the obligation to place at the disposal of the European Commission the amounts corresponding to the duties recorded for the United Kingdom, in respect of Gibraltar, only if the conditions laid down in Article 13(2) of Regulation (EU, Euratom) No 609/2014 have been fulfilled.

9. The European Commission shall transfer the amounts credited to an account opened by the United Kingdom, in respect of Gibraltar, within thirty days from the date of notification by a Member State that an amount has been credited. The United Kingdom, in respect of Gibraltar, shall inform the European Commission of the details of the account to be credited and shall bear any charges on this account.

10. In the implementation of paragraphs 1(a) and 1(b), Articles 4 to 7 of this Annex shall apply.

PUBLIC

ARTICLE 4

Completion of accounting procedures at designated customs posts

1. The import duty shall be entered in the "accounts of the United Kingdom, in respect of Gibraltar" (by a procedure analogous to that detailed in the first subparagraph of Article 6(3) of Regulation (EU, Euratom) No 609/2014) in accordance with the provisions of that Article. However, the authorities of the Member States with designated customs posts may decide not to make an entry in the "accounts of the United Kingdom, in respect of Gibraltar" if the established duties for which security has been provided have been challenged and might upon settlement of the disputes be subject to change. In this case, pending the outcome of the ensuing national administrative or legal procedures undertaken by the competent authorities, the amount of import duties shall be recorded in separate "United Kingdom, in respect of Gibraltar" accounts (by a procedure analogous to that detailed in the second subparagraph of Article 6(3) of Regulation (EU, Euratom) No 609/2014).

2. For the purposes of paragraph 1, the following shall be considered to be "competent authorities":

(a) for any question relating to implementation of the laws, regulations or administrative provisions applicable to customs matters, the administrative or judicial authorities of the Member State which carried out the customs clearance or, where appropriate, those of the Union;

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(b) for any question relating to procedural provisions, the administrative or judicial authorities of the Member State which carried out the customs clearance; and

(c) for any question relating to implementation concerning the forced recovery of debts, the judicial authorities of the United Kingdom, in respect of Gibraltar, in Gibraltar or the competent authorities within the Union in their territory.

PUBLIC

ARTICLE 5

Discharge of the special transit procedure

1. The special transit procedure shall be discharged by the customs office of departure when it is possible to establish, on the basis of a comparison of the data available to the customs office of departure and those available to the customs office of destination, that the procedure has ended correctly.

2. In case the special transit procedure cannot be discharged and, in any event, no later than three months after the release of the goods for transit, an entry shall be made in the register referred to above in Article 1(4) of this Annex and a correction made to the initial entry in the accounts of the United Kingdom, in respect of Gibraltar. In this case, the import duties shall be established as Union's own resources and entered in the accounts detailed in the first subparagraph of Article 6(3) of Regulation (EU, Euratom) No 609/2014 or, where appropriate, in the separate accounts referred to in the second subparagraph of Article 6(3) of that Regulation. This application shall be without prejudice to any corrections, which might prove necessary, for instance, in light of investigations conducted in the context of the transit arrangements or as a result of action undertaken in the context of mutual assistance as laid down in the Protocols on mutual administrative assistance in customs matters and on administrative cooperation and combating fraud in the field of value added tax and excise duty and on mutual assistance for the recovery of claims relating to taxes and duties.

ARTICLE 6

Transaction tax and excise duties

1. For control purposes, a register shall also be kept by the designated customs post containing details of all imports bound for Gibraltar, including:

(a) reference to the duties entered in the accounts;

(b) the commodity codes;

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(c) the quantities and value of goods;

(d) the date of acceptance of the declaration;

(e) the items of charge;

(f) the amount of duty involved;

(g) the master reference number (T1GIXXX); and

(h) any other data necessary for the calculation of the transaction tax and, where applicable, the excise duty.

This information shall be transmitted to the competent authorities of the United Kingdom, in respect of Gibraltar, for the calculation of the amount of the transaction tax and excise duty, where applicable, due at the moment of presentation of the goods in Gibraltar to the competent authorities of the United Kingdom, in respect of Gibraltar.

PUBLIC

2. Where the messages or the proofs on transaction tax and excise duties, where relevant, are not presented, or where the transit movement could not be discharged, an entry shall be made in the register referred to in paragraph 1. In this case, the relevant designated customs post shall treat the movement as an irregular entry and levy the VAT and excise duties applicable in the Member State of the designated customs post. The holder of the transit procedure shall be liable for the relevant amount. This application of VAT and excise duty shall be without prejudice to any corrections which might prove necessary in the light of an investigation conducted or as a result of action undertaken in the context of mutual assistance as laid down in the Protocols on mutual administrative assistance in customs matters and on administrative cooperation and combating fraud in the field of value added tax and excise duty and on mutual assistance for the recovery of claims relating to taxes and duties.

3. By derogation from paragraph 2, goods released for free circulation with regard to import duties, for which there is a justified business need to suspend levying of transaction tax and excise duties may benefit from the exceptions established in Article 1(5) of Annex 19, the conditions and procedure laid down in paragraphs 5 to 9 of Article 1 of Annex 19 being applicable *mutatis mutandis*.

PUBLIC

ARTICLE 7

Completion of the border formalities
for goods placed under a special procedure other than transit

1. The procedures referred to in Articles 3 and 4 shall apply *mutatis mutandis* to processed products and to goods moved into the territory of Gibraltar for which a customs debt has arisen.

2. The customs declaration for the discharge of the inward processing or the temporary admission procedures shall be submitted to the designated customs post where the declaration for the placement of the goods under that procedure was presented. Processed products derived from the goods which were placed under the inward processing procedure, or the goods which were placed in inward processing or temporary admission procedure in Gibraltar must be physically presented in that designated customs post when the customs declaration for discharge is submitted.

3. In exceptional and duly justified circumstances, goods or processed products derived from the goods placed under an inward processing procedure or goods placed under a temporary admission procedure may leave Gibraltar by sea to countries and territories outside the customs union from the port in Gibraltar without a physical presentation in the designated customs post. The holder of the authorisation shall submit a re-export declaration at the designated customs post that granted the inward processing authorisation for the goods in accordance with Article 8(1) of this Annex, at least 48 hours before the effective removal from Gibraltar port. The goods must be physically present in Gibraltar port at the moment the re-export declaration is submitted to the designated customs post. This designated customs post shall discharge the inward processing procedure once the holder of the authorisation provides proof that the goods have left the customs union.

PUBLIC

4. In exceptional and duly justified circumstances, goods arriving by sea to the port in Gibraltar from countries and territories outside the customs union can be placed under an inward processing or temporary admission procedure. In addition, fuel for commercial seagoing vessels which is to be placed under the customs warehousing procedure for subsequent use in the context of ship supplies may arrive by sea to the port of Gibraltar. The customs declaration shall be sent to a designated customs post and the goods shall not be moved from the port until the release of the goods for the relevant special procedures by the designated customs post.

PUBLIC

ARTICLE 8

Export to countries and territories outside the customs union from Gibraltar

1. Customs clearance operations relating to exports from Gibraltar to countries and territories outside the customs union shall be carried out at any designated customs post.

The customs clearance operations relating to exports referred to above shall be carried out by the designated customs posts in accordance with those provisions of Union law that would apply if the goods were exported from the Union.

2. Where the goods are presented to the competent authorities of the United Kingdom, in respect of Gibraltar, for the purpose of paragraph 1, those authorities shall issue a T1GI or T2GI document which shall be submitted to a designated customs post, which will act as customs office of destination. Where goods in Gibraltar are presented to the competent authorities of the United Kingdom, in respect of Gibraltar, with a view to be moved to the Union, the NCTS shall be used applying the code T1GI or T2GI as the case may be (re-export from a customs warehouse or after inward processing or temporary admission). The transit data of the goods shall be declared in the NCTS and the goods moved following the transit process to the designated customs post acting as office of destination.

3. The procedure of Article 5 of this Annex shall apply *mutatis mutandis*. Where the customs office of departure in Gibraltar has not received the information required to prove that the goods have arrived in a designated customs post, the United Kingdom, in respect of Gibraltar, shall collect, in the case of code T2GI, the relevant VAT and excise duties applicable in the Member State of the designated customs post and shall transfer the taxes levied to the competent authorities of that Member State. However, in the event, that the competent authorities of the United Kingdom, in respect of Gibraltar, can provide conclusive evidence that the goods under transit have ultimately remained in Gibraltar, transaction tax and, where applicable, Gibraltar excise duties shall be levied instead.

PUBLIC

In the case of T1GI, the customs office of departure shall inform the designated customs post acting as office of destination in the Union which shall establish the customs duties, VAT and excise duties, where applicable.

4. Administrative arrangements between the competent authorities within the Union and the competent authorities of the United Kingdom, in respect of Gibraltar, shall set out the practical modalities for the implementation of paragraph 3.

5. Ship supplies may leave the territory of Gibraltar via the port or airport solely in accordance with the Union customs and indirect taxation provisions applicable for comparable transactions in the Union. Paragraph 1 applies with the exception of the presentation of the goods at a designated customs post.

PUBLIC

Appendix 1

DESIGNATED CUSTOMS POSTS

1. This Appendix includes the list of customs posts designated by the Union for the purposes of this Agreement ("designated customs posts"), which shall not be less than three and shall be located in Spain, as follows:

   (a) La Línea de la Concepción;

   (b) Algeciras; and

   (c) Sagunto

2. However, a subsidiary designated customs posts shall be designated in [Portugal] to be accessible for the purposes of this Agreement and to function exclusively in the event that none of the designated customs posts in Spain are accessible for over 24 hours because of unforeseeable circumstances or for reasons of force majeure. In such case, the Commission shall communicate without delay to [Portugal] the need to activate the functions of the subsidiary designated customs posts that shall apply the Business Continuity Procedures under the Union customs provisions.

PUBLIC

Appendix 2

Where the goods would be eligible to preferential tariff treatment set out in the agreement below, the respective tariff quotas and tariffs and, as the case may be, procedures of verification and administrative cooperation shall be applied:

Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part[1].

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[1] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ EU L 149, 30.4.2021, p. 10, ELI: http://data.europa.eu/eli/agree_internation/2021/689(1)/oj).

ANNEX 22

PUBLIC

PRACTICAL MODALITIES FOR THE APPLICATION OF ARTICLE 265

ARTICLE 1

Joint visits to Gibraltar

1. The competent authorities within the Union shall submit a notification to the competent authorities of the United Kingdom, in respect of Gibraltar, for the purpose of carrying out a joint visit by representatives of the competent authorities within the Union and of the competent authorities of the United Kingdom, in respect of Gibraltar, to inspect the relevant aircraft, ships, infrastructures and facilities in Gibraltar where a risk to the Union's Single Market for goods has been identified.

2. The competent authorities of the United Kingdom, in respect of Gibraltar, shall make themselves available so that the visit can be carried out jointly with the competent authorities of the Union.

3. The practical modalities of the visits carried out in accordance with this Article shall be laid down in administrative arrangements between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain.

ARTICLE 2

Actions and measures

1. Without prejudice to Articles 260 to 264 of this Agreement, the actions and measures that can be undertaken during the joint visits shall include the following:

(a) verification of the online information, including customs documents, to be provided in real time by the competent authorities of the United Kingdom, in respect of Gibraltar, regarding ships and aircraft entering and exiting the port and airport, in particular for risk assessment purposes;

(b) inspections of ships and aircraft at the port or airport, to verify that goods are not loaded or unloaded from these ships and aircraft otherwise than in accordance with this Title;

(c) selective controls of goods carried in ships and aircraft at the port or airport based on a risk assessment;

(d) random and risk-based inspection of goods brought by passengers of ships and aircraft, to verify that these passengers do not carry prohibited goods, or goods in quantities which exceed those permitted on the basis of this Agreement without prejudice to Annex 23; and

(e) inspection measures as foreseen in Article 3(6) of Annex 21.

The competent authorities of the United Kingdom, in respect of Gibraltar, shall carry out the actions and measures expeditiously.

PUBLIC

2. Without prejudice to Articles 260 to 264 of this Agreement, the competent authorities within the Union shall have a continued real-time online access to the following information:

(a) time schedule of all incoming and outgoing ships and aircraft at the port and airport;

(b) arrival and leaving notices of all ships, boats and aircraft;

(c) any available customs documents with regard to the ships and aircraft referred to in point (a); and

(d) number and characteristics of all previous checks carried out by the competent authorities of the United Kingdom, in respect of Gibraltar, on crew and passengers of all ships and aircraft referred to in subparagraph (a) entering or exiting the port and airport.

ARTICLE 3

Enforcement and follow up of joint visits

1. Without prejudice to Article 252, if the competent authorities of the United Kingdom, in respect of Gibraltar, fail to comply with their obligations under Article 1(2), the movement of commercial goods into or from the port, and where allowed, in the airport in Gibraltar shall be suspended after notification by the competent authorities within the Union to the European Commission. Any such suspension shall end at the point the competent authorities of the United Kingdom, in respect of Gibraltar, comply with their obligations under Article 1(2).

PUBLIC

2. The competent authorities of the United Kingdom, in respect of Gibraltar, shall inform the competent authorities within the Union of the measures and sanctions taken following the findings of a joint visit.

PUBLIC

ARTICLE 4

Data protection

The competent authorities within the Union may use information as referred to in this Annex only for the purpose of exercising their rights under the Agreement. The Union shall ensure that the competent authorities within the Union do not disclose information other than to the institutions, bodies, offices and agencies of the Union, unless they have been so authorised by the competent authorities of the United Kingdom, in respect of Gibraltar. The competent authorities of the United Kingdom, in respect of Gibraltar, may not decline to authorise such disclosure except for duly justified reasons.

ARTICLE 5

Information from designated customs posts

The competent authorities of the United Kingdom, in respect of Gibraltar, shall be entitled to request written information on how trade destined for Gibraltar is being administered. Such information shall be provided by the designated customs post as soon as possible.

ANNEX 23

PUBLIC

PROVISIONS ON GOODS, PETS AND CASH CARRIED BY TRAVELLERS IN ACCORDANCE WITH ARTICLES 247(3) AND 267

SECTION 1

CASH CONTROL

ARTICLE 1

Definitions

1. For the purposes of this Annex, the following definitions apply:

(a) "bearer-negotiable instruments" means instruments other than currency which entitle their holders to claim a financial amount upon presentation of the instruments without having to prove their identity or entitlement to that amount. Those instruments are:

(i) traveller's cheques; and

(ii) cheques, promissory notes or money orders that are either in bearer form, signed but with the payee's name omitted, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery.

(b) "cash" means currency, bearer negotiable instruments, commodities used as highly liquid stores of value and pre-paid cards, as per Regulation (EU) 2018/1672[1] of the European Parliament and the Council;

(c) "commodity used as a highly-liquid store of value" means a good, as listed in point 1 of Annex I of Regulation (EU) 2018/1672 on controls on cash entering or leaving the EU, that presents a high ratio between its value and its volume and that can easily be converted into currency through accessible trading markets while incurring only modest transaction costs;

(d) "competent authorities" means the customs authorities of the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain – depending on the destination; and

(e) "currency" means banknotes and coins that are in circulation as a medium of exchange or that have been in circulation as a medium of exchange and can still be exchanged through financial institutions or central banks for banknotes and coins that are in circulation as a medium of exchange.

2. Article 19 of this Agreement shall apply.

[1] Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005 (OJ EU L 284, 12.11.2018, p. 6, ELI: http://data.europa.eu/eli/reg/2018/1672/oj) and Commission Implementing Regulation (EU) 2021/776 of 11 May 2021 establishing templates for certain forms as well as technical rules for the effective exchange of information under Regulation (EU) 2018/1672 of the European Parliament and of the Council on controls on cash entering or leaving the Union (OJ EU L 167, 12.5.2021, p. 6, ELI: http://data.europa.eu/eli/reg_impl/2021/776/oj).

ARTICLE 2

Obligation to declare accompanied cash

1. Carriers who carry cash of a value of EUR 10 000 or more shall declare that cash to the competent authorities in the airport as a general rule when entering or leaving Gibraltar and make it available to them for control. The obligation to declare cash shall not be deemed to be fulfilled if the information provided is incorrect or incomplete or if the cash is not made available for control.

2. The declaration referred to in paragraph 1 shall provide details about the following:

(a) the carrier, including full name, contact details, including address, date and place of birth, nationality and identification document number;

(b) the owner of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number, where the owner is a natural person, or the full name, contact details, including address, registration number and, where available, VAT identification number, where the owner is a legal person;

(c) where available, the intended recipient of the cash, including the full name, contact details, including address, date and place of birth, nationality and identification document number, where the intended recipient is a natural person, or the full name, contact details, including address, registration number and, where available, VAT identification number, where the intended recipient is a legal person;

PUBLIC

(d) the nature and the amount or value of the cash;

(e) the economic provenance of the cash;

(f) the intended use of the cash;

(g) the transport route; and

(h) the means of transport.

3. The details listed in paragraph 2 of this Article shall be provided in writing or electronically, using the declaration form referred to in Appendix 1 to this Annex. An endorsed copy of the declaration shall be delivered to the declarant upon request.

ARTICLE 3

Powers of the competent authorities

1. In order to verify compliance with the obligation to declare accompanied cash laid down in Article 2, the competent authorities shall have the power to carry out controls on natural persons, their luggage and their means of transport, in accordance with the conditions established in this Agreement and laid down in domestic law. These controls shall be carried out on the premises of the airport as a general rule, including as regards passengers arriving or leaving via the port.

PUBLIC

2. If the obligation to declare accompanied cash under Article 2 has not been fulfilled, the competent authorities shall compose, in writing or in an electronic form, an ex officio declaration which shall contain to the extent possible the details listed in Article 2(2).

3. For the purposes of Article 4, the competent authorities shall also exercise the powers conferred on them under this Article.

PUBLIC

ARTICLE 4

Sub-threshold amounts suspected to be related to criminal activity

Where the competent authorities detect a carrier with an amount of cash below the threshold referred to in Article 2 and that there are indications that the cash is related to criminal activity, they shall record that information and the details listed in Article 2(2).

ARTICLE 5

Temporary detention of cash by competent authorities

1. The competent authorities may temporarily detain cash by means of an administrative decision in accordance with the conditions laid down in this Agreement and the domestic law where:

(a) the obligation to declare accompanied cash under Article 2 has not been fulfilled; or

(b) there are indications that the cash, irrespective of the amount, is related to criminal activity.

2. The administrative decision referred to in paragraph 1 shall be subject to an effective remedy in accordance with procedures provided for in domestic law. The competent authorities shall notify a statement of reasons for the administrative decision to:

(a) the person required to make the declaration in accordance with Article 2; or

(b) the person required to provide the information in accordance with Article 4.

3. The period of temporary detention shall be strictly limited under domestic law to the time required for the competent authorities to determine whether the circumstances of the case warrant further detention. The period of temporary detention shall not exceed 30 days. After the competent authorities carry out a thorough assessment of the necessity and proportionality of a further temporary detention, they may decide to extend the period of temporary detention to a maximum of 90 days. Where no determination is made regarding further detention of the cash within that period or if a determination is made that the circumstances of the case do not warrant further detention, the cash shall be immediately released to:

(a) the person from whom the cash was temporarily detained in the situations referred to in Article 2; or

(b) the person from whom the cash was temporarily detained in the situations referred to in Article 4.

PUBLIC

ARTICLE 6

Provision of information to the Financial Intelligence Unit (FIU)

The competent authority shall transmit the information obtained in the cash declarations and during their controls to the Financial Intelligence Unit (FIU) competent for the United Kingdom, in respect of Gibraltar.

ARTICLE 7

Penalties

The United Kingdom, in respect of Gibraltar, shall introduce penalties which shall apply in the event of failure to comply with the obligation to declare accompanied cash laid down in Article 2. Such penalties shall be effective, proportionate and dissuasive.

PUBLIC

SECTION 2

TRAVELLERS' ALLOWANCES

ARTICLE 8

The United Kingdom, in respect of Gibraltar, shall, on the basis of either monetary thresholds or quantitative limits which shall not exceed those provided for in this Annex, exempt from customs duties and indirect taxation goods imported in the personal luggage of travellers, only provided that the imports are of a non-commercial character.

ARTICLE 9

For the purposes of the application of the exemptions, personal luggage shall be regarded as the whole of the luggage which a traveller is able to present to the customs authorities upon arrival, as well as luggage which they present later to the same authorities, subject to proof that such luggage was registered as accompanied luggage, at the time of their departure, with the company which has been responsible for conveying them. Fuel other than that referred to in Article 15 shall not be regarded as personal luggage.

PUBLIC

ARTICLE 10

1. For the purposes of the application of the exemptions and without prejudice to Articles 11 to 17 of this Annex, imports shall be regarded as being of a non-commercial character if they consist exclusively of goods for the personal or family use of travellers, or of goods intended as presents. The frequency with which the goods are imported by travellers, their nature or their quantity must not be such as to indicate that they are being imported for commercial reasons.

2. Goods imported in the personal luggage of travellers exceeding the monetary thresholds or quantitative limits provided for in this Annex, but still considered non-commercial in accordance with paragraph 1, shall be subject to the declarations, controls and checks established in Article 22(2) of this Annex.

ARTICLE 11

1. The United Kingdom, in respect of Gibraltar, shall exempt from customs duties and indirect taxation imports of non-commercial goods in the case of air and sea travellers, other than those referred to in Articles 12, 13 and 15 of this Annex, the total value of which does not exceed the equivalent of EUR 430 per person.

The United Kingdom, in respect of Gibraltar, and the Union shall exempt from customs duties and indirect taxation imports of non-commercial goods in the case of travellers by land other than those referred to in Articles 12, 13 and 15 of this Annex, the total value of which does not exceed the equivalent of EUR 300 per person.

PUBLIC

2. In the case of travellers under 15 years old, whatever their means of transport, the monetary thresholds referred to in subparagraph 1 shall be EUR 175.

3. For the purposes of applying the monetary thresholds, the value of an individual item may not be split up.

4. The value of the personal luggage of a traveller, which is imported temporarily or is re-imported following its temporary export, and the value of medicinal products required to meet the personal needs of a traveller shall not be taken into consideration for the purposes of applying the exemptions referred to in paragraphs 1 and 2.

PUBLIC

ARTICLE 12

1. The United Kingdom, in respect of Gibraltar, shall exempt from customs duties and indirect taxation imports via air and sea of the following types of tobacco product:

(a) 200 cigarettes or 80 cigarettes in the case of crew members of a means of transport used for border crossing travel;

(b) 100 cigarillos;

(c) 50 cigars; and

(d) 250 g smoking tobacco.

2. The United Kingdom, in respect of Gibraltar, and the Union shall exempt from customs duties and indirect taxation imports by land of the following types of tobacco product:

(a) 200 cigarettes or 80 cigarettes in case of residents or frontier-zone workers;

(b) 100 cigarillos;

(c) 50 cigars; and

(d) 250 g smoking tobacco.

3. Each amount specified in points (a) to (d) shall represent, for the purposes of paragraph 4, 100 % of the total allowance for tobacco products. Cigarillos may not exceed a maximum weight of 3 grams each.

4. In the case of any one traveller, the exemption may be applied to any combination of tobacco products, provided that the aggregate of the percentages used up from the individual allowances does not exceed 100 %.

PUBLIC

ARTICLE 13

1. The United Kingdom, in respect of Gibraltar, shall exempt from customs duties and indirect taxation alcohol and alcoholic beverages other than still wine and beer, subject to the following quantitative limits:

(a) a total of 1 litre of alcohol and alcoholic beverages of an alcoholic strength exceeding 22 % vol, or of undenatured ethyl alcohol of 80 % vol and over; and

(b) a total of 2 litres of alcohol and alcoholic beverages of an alcoholic strength not exceeding 22 % vol.

Each of the amounts specified in points (a) and (b) represent, for the purposes of paragraph 2, 100 % of the total allowance for alcohol and alcoholic beverages.

2. In the case of any one traveller, the exemption may be applied to any combination of the types of alcohol and alcoholic beverage referred to in paragraph 1, provided that the aggregate of the percentages used up from the individual allowances does not exceed 100 %.

3. The United Kingdom, in respect of Gibraltar, shall exempt from indirect taxation a total of 4 litres of still wine and 16 litres of beer.

PUBLIC

ARTICLE 14

Exemptions under Articles 12 or 13 shall not apply in the case of travellers under 17 years of age.

ARTICLE 15

The United Kingdom, in respect of Gibraltar, shall exempt from customs duties and indirect taxation, in the case of any one means of motor transport, the fuel contained in the standard tank and a quantity of fuel not exceeding 10 litres contained in a portable container.

ARTICLE 16

The value of goods referred to in Articles 12, 13 or 15 shall not be taken into consideration for the purposes of applying the exemption provided for in Article 11.

ARTICLE 17

Goods brought by travellers of non-commercial nature in accordance with Articles 8 to 16 of this Annex moving between the Union and Gibraltar shall not be subject to the reimbursement of indirect taxes when leaving the territory of a Party and entering the territory of the other Party.

PUBLIC

ARTICLE 18

At the end of the transitory period as laid down in Article 2 of Annex 6 or as determined in accordance with Article 248 and notwithstanding Article 247(5) of this Agreement:

(a) the Union shall take the measures necessary to ensure that non-commercial goods in the luggage of travellers from Gibraltar via land or via Gibraltar airport or port are treated as transactions originating in Spain as regards both harmonised excise duties and VAT provided that a system has been put in place in Gibraltar applying excise duties and transaction tax, including rates and exemptions as provided for in this Agreement;

(b) the United Kingdom, in respect of Gibraltar, shall take the measures necessary to ensure that non-commercial goods in the luggage of travellers to Gibraltar via land or from an airport or port within the Union are treated as transactions originating in Gibraltar as regards both harmonised excise duties and transaction tax provided that a system has been put in place in Gibraltar applying excise duties and transaction tax, including rates and exemptions as provided for in this Agreement; and

(c) where a distortion under Article 248(4)(b) has been established by the independent consultative body and the United Kingdom, in respect of Gibraltar, has not complied with its obligation under Article 248(5), the Parties may reintroduce allowances for the non-commercial goods in the luggage of travellers. The Parties may not reintroduce such allowances where the Union has invoked the safeguard procedure under Article 249.

PUBLIC

SECTION 3

FOOD, PLANTS, PLANTS PRODUCTS AND PETS

ARTICLE 19

1. With regard to the personal luggage and the pet animals which accompany travellers entering the port and airport in Gibraltar, the following provisions of Union law shall apply in the United Kingdom, in respect of Gibraltar:

(a) Regulation (EU) 2016/429 of the European Parliament and of the Council[1] of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ("Animal Health Law") – Part VI (Articles 244-256);

(b) Commission Delegated Regulation supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council[2], as regards animal health requirements for non-commercial movement of pet animals to be adopted on the basis of Articles 3(5), 245(3), 246(3), 249(3), 252(1) and 254 of AHL [in application from 22 April 2026];

[1] OJ EU L 84, 31.3.2016, p. 1.
[2] OJ EU L 84, 31.3.2016, p. 1.

(c) Commission Implementing Regulations respectively "adopting lists of third countries or territories that comply with certain conditions for non-commercial movement of pet animals", "establishing model identification documents and model declarations for non-commercial movement of pet animals" and "amending Implementing Regulation (EU) 2021/620[1] as regards disease-free status from infestation with *Echinococcus multilocularis* and correcting Annex VIII", to be adopted on the basis of Articles 36(4), 245(4), 253(1) and 255 of AHL [in application from 22 April 2026];

(d) Regulation (EU) 2017/625 of the European Parliament and of the Council[2] of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC;

(e) Articles 7, 8, 9, 11 and 12 of Commission Delegated Regulation (EU) 2019/2122[3] of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market and amending Commission Regulation (EU) No 142/2011;

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1 OJ EU L 131, 16.4.2021, p. 78.
2 OJ EU L 95, 7.4.2017, p. 1.
3 OJ EU L 321, 12.12.2019, p. 45.

(f) Articles 164 and 165 of Commission Delegated Regulation (EU) 2020/692[1] of 30 January 2020 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin; and

(g) Article 3(s) of Commission Implementing Regulation (EU) 2021/404[2] of 24 March 2021 laying down the lists of third countries, territories or zones thereof from which the entry into the Union of animals, germinal products and products of animal origin is permitted in accordance with Regulation (EU) 2016/429 of the European Parliament and of the Council.

[Legislation in application until 21 April 2026:]

(h) Regulation (EU) No 576/2013 of the European Parliament and of the Council[3] of 12 June 2013 on the non-commercial movement of pet animals and repealing Regulation (EC) No 998/2003 (in application until 21 April 2026);

(i) Commission Implementing Regulation (EU) No 577/2013[4] of 28 June 2013 on the model identification documents for the non-commercial movement of dogs, cats and ferrets, the establishment of lists of territories and third countries and the format, layout and language requirements of the declarations attesting compliance with certain conditions provided for in Regulation (EU) No 576/2013 of the European Parliament and of the Council (in application until 21 April 2026);

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1 OJ EU L 174, 3.6.2020, p. 379.
2 OJ EU L 114, 31.3.2021, p. 1.
3 OJ EU L 178, 28.6.2013, p. 1.
4 OJ EU L 178, 28.6.2013, p. 109.

(j) Commission Delegated Regulation (EU) 2018/772[1] of 21 November 2017 supplementing Regulation (EU) No 576/2013 of the European Parliament and of the Council with regard to preventive health measures for the control of *Echinococcus multilocularis* infection in dogs, and repealing Delegated Regulation (EU) No 1152/2011 (in application until 21 April 2026);

(k) Commission Implementing Regulation (EU) 2018/878[2] of 18 June 2018 adopting the list of Member States, or parts of the territory of Member States, that comply with the rules for categorisation laid down in Article 2(2) and (3) of Delegated Regulation (EU) 2018/772 concerning the application of preventive health measures for the control of *Echinococcus multilocularis* infection in dogs (in application until 21 April 2026);

(l) Commission Delegated Regulation (EU) 2021/1933[3] of 14 July 2021 supplementing Regulation (EU) No 576/2013 of the European Parliament and of the Council with regard to rules for non-commercial movements of pet birds into a Member State from a territory or a third country (in application until 21 April 2026); and

(m) Commission Implementing Regulation (EU) 2021/1938[4] of 9 November 2021 establishing the model identification document for non-commercial movements of pet birds into a Member State from a territory or a third country and repealing Decision 2007/25/EC (in application until 21 April 2026).

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1 OJ EU L 130, 28.5.2018, p. 1.
2 OJ EU L 155, 19.6.2018, p. 1.
3 OJ EU L 396, 10.11.2021, p. 4.
4 OJ EU L 396, 10.11.2021, p. 47.

2. Procedures and controls established in the legislation listed in paragraph 1 shall not apply to personal luggage and the pet animals brought by travellers moving between the Union and Gibraltar through the land border.

3. Article 19 of this Agreement shall apply.

PUBLIC

SECTION 4

FINAL COMMON PROVISIONS

ARTICLE 20

1. Products brought into the Union by travellers via land immediately after entering through the port and airport are exempted from the procedures applicable to goods, pets and cash established in this Annex.

2. For the purpose of the application of paragraph 1, the Parties shall ensure that goods in the luggage of passengers coming through the port are transferred immediately to the airport, as a general rule, for the purposes of undergoing the necessary checks, together and under the same conditions as the passengers themselves as foreseen in Article 29(3) of this Agreement.

ARTICLE 21

The relevant current and future Union legislation on:

(a) prohibitions and restrictions, including notably the rules in relation to arms, dual use, cultural goods and the CITES; and

(b) the obligation to impose sanctions

shall apply in relation to goods of this Annex entering and leaving Gibraltar as specified by the Specialised Committee on Economy and Trade.

ARTICLE 22

1. Administrative arrangements shall be established between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain to exchange information on declarations and information obtained under this Annex and in relation to the application of procedures, controls and checks on goods, cash and pets carried by passengers entering Gibraltar or the Union via land, as well as in relation to the Union legislation listed in Article 21 of this Annex.

PUBLIC

2. The competent authorities within the Union shall establish a counter, serving as a branch office of a designated customs post, in the airport for the sole purpose of declarations, controls and checks:

(a) concerning goods brought by travellers from outside the customs union into Gibraltar or for goods to be brought by travellers into the Union from Gibraltar; and

(b) concerning cash to be entered into the Union

via land, sea or air.

3. Without prejudice to paragraph 1, controls and checks may be implemented by the competent authorities of the United Kingdom, in respect of Gibraltar, on those goods carried by travellers between the Union and Gibraltar at any moment and at any point on their respective customs territory, including the land border, when considered necessary.

PUBLIC

Appendix 1

CASH DECLARATION FORM[1]

PUBLIC

[1] Consolidated text: Commission Implementing Regulation (EU) 2021/776 of 11 May 2021 establishing templates for certain forms as well as technical rules for the effective exchange of information under Regulation (EU) 2018/1672 of the European Parliament and of the Council on controls on cash entering or leaving the Union (OJ EU L 167, 12.5.2021, p. 6, ELI: http://data.europa.eu/eli/reg_impl/2021/776/oj).

CASH DECLARATION
Article 3 of Regulation (EU) 2018/1672

For official use	Reference number	

1. I am	☐ entering the European Union (EU)	☐ leaving the EU

2. Details of the carrier of the cash

First name(s)		Nationality	
Last name(s)		Personal identification number*	
Gender	☐ male ☐ female ☐ other	Address Street* and number *	street / number
Date of birth	DD MM YYYY	Town	
Place of birth	town / country	Postal / ZIP code*	
ID document	☐passport ☐ID card ☐other(specify)_____	Country	
ID document number		Telephone number*	
Country of issue		Email address*	
Date of issue	DD MM YYYY		

3. Transport details

Country of first departure		Departure date	DD MM YYYY
Country of final destination		Arrival date	DD MM YYYY
Via (transit country/-ies)*		Transit date*	DD MM YYYY

Means of transport	☐ **AIR** (specify) ☐ commercial flight ☐ private jet ☐ other	☐ **SEA / FLUVIAL** (specify) ☐ commercial vessel ☐ yacht ☐ cruise ☐ other	☐ **RAIL**	☐ **ROAD** (specify) ☐ truck ☐ bus ☐ car ☐ other	☐ **OTHER** (specify) _____

Itinerary of transport	
	Name/place of the first airport/port/train station of departure
	Name/place of the final airport/port/train station of arrival
	Name/place of the airport/port/train station of transit
	Land border crossing point (only by road)
Reference number (e.g. flight number, ship identification, train number, country code and license plate)	
Transport company*	

4. Details of cash

Currency (banknotes and coins)	**Value**	**Currency**	**Value**	**Currency**
	1)		3)	
	2)		4)	

Bearer negotiable instruments	**Type of bearer negotiable instrument**	**Value**	**Currency**

Commodities used as highly-liquid stores of value (i.e. gold)	**Type**	**Quantity**	**Total weight (in grams)**	**Value**	**Currency**

*If applicable or available. If not applicable or available, indicate 'N/A'.

PUBLIC

5. Economic provenance and intended use of the cash (more than one option is possible in each Subsection 5.A and 5.B)	
5.A. Economic provenance (This Subsection is filled in when there is only one owner. If there is more than one owner, the information must be filled in using additional sheets. In this case, tick 'other' and specify 'additional sheets')	**5.B. Intended use** (This Subsection is filled in when there is only one intended recipient. If there is more than one intended recipient, the information must be filled in using additional sheets. In this case, tick 'other' and specify 'additional sheets')
☐ Labour profits (income, retirement, income from entrepreneurship etc.) ☐ Capital profits (dividends, investment profits, interest, insurance etc.) ☐ Sale of real estate property ☐ Sale of moveable property ☐ Loan granted by a natural person ☐ Loan granted by a legal entity (credit institution, bank or company) ☐ Lottery / gambling ☐ Gift / donation ☐ Inheritance ☐ Other (specify)_____	☐ Labour expenses (salary payments, investment business etc.) ☐ Capital investment (deposits to bank account, insurance payments etc.) ☐ Funds for purchasing real estate ☐ Funds for purchasing moveable property ☐ Repayment of loan granted by a natural person ☐ Repayment of loan granted by a legal entity (credit institution, bank or company) ☐ Lottery / gambling ☐ Charity ☐ Cash to shipmaster/ board cash ☐ Vacation / recreation ☐ Transfer of cash by professional cash couriers (currency exchange companies) ☐ Transfer of cash by professional cash couriers (other) ☐ Other (specify)_____

6. Owner of the cash: Are you the sole owner of the cash?	
☐ **Yes, I am the sole owner**	→ Go to Section 7
☐ **No, the sole owner is another natural person**	→ Fill in Subsection 6.A
☐ **No, the sole owner is a legal person**	→ Fill in Subsection 6.B
☐ **No, there is more than one owner**	→ Fill in the total number of owners below and use additional sheets to fill in their details. Go to Section 7.
Total number of owners:	

7. Intended recipient of the cash: Are you the sole intended recipient of the cash?	
☐ **Yes, I am the sole intended recipient for all cash**	→ Go to Section 8
☐ **No, the sole intended recipient is the sole owner**	→ Go to Section 8
☐ **No, the sole intended recipient is another natural person**	→ Fill in Subsection 7.A
☐ **No, the sole intended recipient is a legal person**	→ Fill in Subsection 7.B
☐ **No, there is more than one intended recipient**	→ Fill in the total number of intendent recipients below and use additional sheets to fill in their details. Go to Section 8.
Total number of intended recipients:	

6.A. Sole owner is a natural person			
First name(s)			
Last name(s)			
Gender	☐ male	☐ female	☐ other
Date of birth	DD MM YYYY		
Place of birth	town	country	
ID document	☐passport	☐ID card	☐other(specify)_____
ID document number			
Country of issue			
Date of issue	DD MM YYYY		
Nationality			
Personal identification number*			
Address Street* and number*	street	number	
Town			
Postal / ZIP code*			
Country			
Telephone number*			
Email address*			

7.A. Sole intended recipient is a natural person			
First name(s)			
Last name(s)			
Gender	☐ male	☐ female	☐ other
Date of birth	DD MM YYYY		
Place of birth	town	country	
ID document	☐passport	☐ID card	☐other(specify)_____
ID document number			
Country of issue			
Date of issue	DD MM YYYY		
Nationality			
Personal identification number*			
Address Street* and number*	street	number	
Town			
Postal / ZIP code*			
Country			
Telephone number*			
Email address*			

*If applicable or available. If not applicable or available, indicate 'N/A'.

6.B. Sole owner is a legal person			
Name			
Registration number			
Name of register			
Registration country			
VAT identification number*			
Economic Operators Registration and Identification (EORI) number *			
Address Street* and number*	street		number
Town			
Postal / ZIP code*			
Country			
Telephone number *			
Email address*			

7.B. Sole intended recipient is a legal person			
Name			
Registration number			
Name of register			
Registration country			
VAT identification number*			
Economic Operators Registration and Identification (EORI) number *			
Address Street* and number *	street		number
Town			
Postal / ZIP code*			
Country			
Telephone number *			
Email address*			

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8. Signature				For official use	
I declare that all the details provided are correct. I understand that if the information provided is incorrect or incomplete, the obligation to declare shall not be deemed fulfilled and I am liable to penalties according to the applicable national legislation.				**Signature and stamp of the competent authority**	
Signature					
Name of the signee:					
Date	DD MM YYYY			**Customs declaration:**	☐ Yes ☐ No
Place	Town	Country		**Customs declaration number:**	
Total number of additional sheets used		Endorsed copy requested	☐ Yes	**Customs office that performed the control:**	

*If applicable or available. If not applicable or available, indicate 'N/A'.

PUBLIC

INDIRECT TAXATION IN GIBRALTAR
IN APPLICATION OF ARTICLES 247(3) AND 248

SECTION 1

GENERAL PROVISIONS

ARTICLE 1

Scope and chargeability of the transaction tax and of the excise duty

1. The transaction tax, and excise duty, where applicable, shall be charged and collected by the competent authorities of the United Kingdom, in respect of Gibraltar:

(a) where the goods which were in free circulation in the Union are moved to Gibraltar, upon presentation of the goods to the competent authorities of the United Kingdom, in respect of Gibraltar, transported under the special transit system for Gibraltar, in accordance with the procedure provided for in Annex 19;

(b) where the goods are imported from countries and territories outside the customs union into Gibraltar, upon presentation of the goods to the competent authorities of the United Kingdom, in respect of Gibraltar, transported under the special transit system for Gibraltar in accordance with the procedure provided for in Annex 21;

(c) where, within the special procedures established in Annexes 19 and 21 (fiscal or customs procedures), Union goods are put on the market in Gibraltar or a customs debt has arisen for non-Union goods;

(d) when goods produced in Gibraltar leave the production site;

(e) when goods are found to have irregularly entered Gibraltar; or

(f) when goods are brought into Gibraltar by travellers in excess of the quantitative thresholds provided for in Annex 23 but are still not considered as of commercial nature upon declaration or completion of checks.

2. For the purposes of point (d) of paragraph 1, goods are considered to have left the production site:

(a) when the goods are physically dispatched or transported out of the production facility by or on behalf of the producer, irrespective of the destination or purpose of such movement;

(b) the moment when the right to dispose of goods as owner is transferred to another party, whether by sale, exchange or any other legal means, even if the goods remain at the production facility.

PUBLIC

ARTICLE 2

Taxable amount and rate of the transaction tax

1. The taxable amount for goods imported into Gibraltar shall be determined with reference to the value for customs purposes. It shall include, insofar as these elements were not already included in the customs value:

(a) taxes, duties, levies and other charges (including excise duties) due by reason of importation, excluding the transaction tax to be levied; and

(b) incidental expenses, such as commission, packing, transport and insurance costs.

2. The taxable amount for goods produced in Gibraltar shall be the open market value at the time the goods leave the production site.

"Open market value" shall mean the full amount that, in order to obtain the goods in question at that time, a customer at the same marketing stage would have to pay, under conditions of fair competition, to a supplier at arm's length in Gibraltar.

Where no comparable supply of goods can be ascertained, "open market value" shall mean an amount that is not less than the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time the goods leave the production site.

PUBLIC

3. The rate of the transaction tax shall be set as follows:

(a) the standard rate shall be set at not less than the lowest standard VAT rate applied by a Member State, which at the time of signature of this Agreement is 17 %.

By derogation from the foregoing, the United Kingdom, in respect of Gibraltar, may gradually increase its standard rate over a period of 3 years to reach the lowest standard VAT rate applied by a Member State, which at the time of signature of this Agreement is 17 %, in accordance with the table below following entry into force of this Agreement.

Year 1	Year 2	Year 3
15 %	16 %	17 % (or such rate as may be the lowest applied by any Member State at that time)

In the context of its ongoing assessment under Article 248(4)(a), the independent consultative body may, in order to avoid significant actual distortions in Gibraltar or the Campo de Gibraltar, recommend, at any time during or after the 3-year period referred to above, that a higher or lower standard rate should apply to a selection of goods or categories of goods. In such cases:

(i) the higher rate that may be proposed would be such rate as the independent consultative body may consider appropriate to eliminate the distortions linked to the differences in rates of the transaction tax charged on those goods or categories of goods by the United Kingdom, in respect of Gibraltar, compared to the rates of VAT charged by the Kingdom of Spain on the same goods or category of goods;

PUBLIC

(ii) the lower rate that may be proposed by the independent consultative body would never be lower than 2pp below the lowest standard rate of VAT applied by any Member State.

After the 3-year period, if the recommendations to apply rates different (higher or lower) from the standard rate to a selection of goods or categories of goods were insufficient to avoid significant actual distortions in Gibraltar or the Campo de Gibraltar linked to the differences in rates of the transaction tax charged by the United Kingdom, in respect of Gibraltar, compared to the rates of VAT charged by the Kingdom of Spain, the independent consultative body may recommend, in the context of its annual assessment under Article 248(4)(b), that the standard rate is adjusted upwards or downwards for all goods subject to that rate.

(b) the reduced rate applicable to goods determined in accordance with paragraph 5 shall be not less than 5 %.

Any adjustment of the reduced rate by the United Kingdom, in respect of Gibraltar, following a recommendation of the independent consultative body referred to in Article 248(4) may concern either all goods or a specific good or a category of goods, and may entail changing a good or category of goods from a reduced rate to a standard rate or a super reduced rate.

4. The United Kingdom, in respect of Gibraltar, may apply a super reduced rate of less than 5 % to the goods listed in Article 2 of Appendix 1.

Any adjustment of the super reduced rate by the United Kingdom, in respect of Gibraltar, following a recommendation of the independent consultative body referred to in Article 248(4) may concern either all goods or a specific good or a category of goods, and may entail changing a good or category of goods from a super reduced rate to a reduced or standard rate.

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5. The list of goods to which a reduced or super reduced tax rate applies as well as the actual rate to be applied is included in Appendix 1 to this Annex. The list of goods to which a reduced or super reduced rate applies shall only include goods to which Member States may, in line with Union legislation concerning VAT, apply a reduced or super reduced rate.

6. If the United Kingdom, in respect of Gibraltar, modifies the list of goods referred to in paragraph 5, it shall only do so in line with Union legislation concerning VAT and shall notify the Union prior to the modifications taking effect.

PUBLIC

ARTICLE 3

Person liable to pay the transaction tax and the Gibraltar excise duty

1. The person who declares the goods or on whose behalf they are declared for entry into Gibraltar and, in the case of irregular entry, any other person involved in the irregular entry of the goods, shall be liable to pay the transaction tax and the Gibraltar excise duty where applicable.

2. The person producing the goods in Gibraltar shall be liable to pay the transaction tax and where applicable, the Gibraltar excise duty.
In case of an irregular production any person involved in the production shall be liable to pay excise duty.

3. Where several persons are liable for payment of the Gibraltar excise duty they shall be jointly and severally liable for such debt.

ARTICLE 4

Exemptions

1. Goods shall be exempt from the transaction tax where, had such goods been imported, supplied or acquired in the Union, they would have benefited from a mandatory exemption from VAT. Goods shall be exempt from excise duty in cases where, had such goods been released for consumption in the Union, they would have benefited from a mandatory exemption from harmonised excise duty.

Where the United Kingdom, in respect of Gibraltar, seeks to avail itself of a discretionary exemption from VAT or harmonised excise duty as regards any goods, it shall first notify the Specialised Committee on Economy and Trade which shall assess whether the exemption may be implemented. The Specialised Committee shall approve or reject the implementation of such exemptions on the basis of objective evidence and reasons.

2. In addition, Liquefied Natural Gas imported and used for the production of electricity as well as electricity produced in Gibraltar shall be exempted from transaction tax and excise duty.

PUBLIC

ARTICLE 5

Refund of the transaction tax and excise duty
where goods are exported from Gibraltar

The United Kingdom, in respect of Gibraltar, shall refund the transaction tax and excise duty where applicable charged on a good upon its export to the Union provided the exporter can prove that VAT or, where applicable, VAT and excise duty have been paid in the Union.

The United Kingdom, in respect of Gibraltar, shall also refund the transaction tax and excise duty where applicable where goods are exported to a country outside the customs union via a designated customs post. The designated customs post shall notify the competent authorities of the United Kingdom, in respect of Gibraltar, thereof.

Goods consumed in Gibraltar shall not be eligible for a refund of the transaction tax and excise duties where applicable.

PUBLIC

SECTION 2

EXCISE DUTY

PUBLIC

ARTICLE 6

Scope and chargeability of excise duties

1. Excise duties in Gibraltar shall be applied consistently with applicable Union excise legislation at any given time.

Any new Union excise duties shall also apply in Gibraltar unless the independent consultative body recommends, in accordance with Article 248(4) of this Agreement, a temporary suspension of up to 1 year.

2. Goods subject to excise duties in the Union, their taxable basis and duty minima, are laid down in Appendix 2. The levels of excise duties shall apply as follows:

(a) Union minimum excise rates shall apply at the entry into force of this Agreement;

(b) target excise rates not diverging by more than 6 pp from or being equivalent to 94 % of the excise rates applied in the Kingdom of Spain shall apply within 3 years of the entry into force of this Agreement.

3. Paragraph 2(a) shall not apply to fuel goods. Those goods are the ones referred to in table A of Section 2(3) in Appendix 2 to this Annex.

4. By derogation from paragraph 2, the Specialised Committee on Trade and Economy, upon recommendation of the independent consultative body referred to in Article 248(4), in case of risk of supply of fuel for vehicles in petrol stations in Gibraltar, may allow the United Kingdom, in respect of Gibraltar, to apply excise duties below the Union minimum excise duties.

5. By derogation from paragraphs 1 and 2, manufactured tobacco products shall be subject to the provisions laid down in Section 3 of Appendix 2 to this Annex.

6. Without prejudice to paragraphs 3 to 5, as from three years after the entry into force of this Agreement, and in the context of its ongoing assessment under Article 248(4)(a), the independent consultative body may, in order to avoid significant actual distortions in Gibraltar or the Campo de Gibraltar, recommend that higher or lower excise rates than those referred to in paragraph 2(b) should apply.

In those cases:

(a) the higher rate that may be proposed would be such rate as the independent consultative body may consider appropriate to eliminate the distortions linked to the differences in levels of the excise duty charged on those goods or category of goods by the United Kingdom, in respect of Gibraltar, compared to the rates of excise duty charged by Kingdom of Spain on the same goods or category of goods;

PUBLIC

(b) the lower rate that may be proposed by the independent consultative body would never be lower than the Union minimum excise rates.

PUBLIC

ARTICLE 7

Registration of excise duty operators

Any person responsible for the entry, production, holding, storage, movement, or exit of excise goods for commercial purposes in Gibraltar shall:

(a) be registered by the competent authorities of the United Kingdom, in respect of Gibraltar;

(b) keep accounts of stock and movements of excise goods and periodically submit them to the competent authorities of the United Kingdom, in respect of Gibraltar; and

(c) consent to all monitoring and stock checks.

ARTICLE 8

Refund of excise duty in case of total destruction or irretrievable loss

The United Kingdom, in respect of Gibraltar, may refund excise duties of excise goods when there is a total destruction or irretrievable loss, total or partial, of these goods as a result of unforeseeable circumstances or force majeure, or as a consequence of an authorisation to destroy the goods by the competent authorities.

SECTION 3

OTHER PROVISIONS

ARTICLE 9

Exceptional circumstances

1. In response to exceptional circumstances and subject to certain conditions laid down in this Article, the United Kingdom, in respect of Gibraltar, may take one of the following measures:

(a) apply a temporary reduced rate of the transaction tax to specific goods deemed essential for addressing the exceptional circumstances; or

(b) temporarily exempt from the transaction tax and excise duties, where applicable, specific goods deemed essential for addressing the exceptional circumstances.

2. The specific goods eligible for a temporary reduced rate or temporary exemption, along with the duration of this measure, shall be subject to approval within a maximum of 1 week of their notification by the Specialised Committee on Economy and Trade taking into account the nature of the exceptional circumstances and the need for rapid response.

PUBLIC

3. It shall be ensured that such temporary measures have no negative impact on the Union's internal market in the form of fiscal fraud risks nor any distortion of competition.

PUBLIC

ARTICLE 10

Statistical information

The United Kingdom, in respect of Gibraltar, shall compile and provide to the Specialised Committee on Economy and Trade statistics on the transaction tax and excise duty paid in Gibraltar on a quarterly basis.

Appendix 1

PUBLIC

INDIRECT TAXATION IN GIBRALTAR: LIST OF GOODS
ELIGIBLE FOR REDUCED TRANSACTION TAX RATES

ARTICLE 1

Gibraltar shall apply a reduced rate of transaction tax of 5 % to goods falling within the following product categories:

– Goods of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings; and, until 1 January 2032, supply of chemical pesticides and chemical fertilisers (11).

– Live equines (11a).

– Live plants and other floricultural products, including bulbs, cotton, roots and the like, cut flowers and ornamental foliage (23).

– Children's clothing and footwear; children's car seats (24).

– Bicycles, including electric bicycles (25);

– Works of art, collectors' items and antiques listed in Annex IX, Parts A, B and C of the EU VAT Directive (26).

– Tools and other equipment of a kind normally intended for use in rescue or first aid services when supplied to public bodies or non-profit-making organisations active in civil or community protection (28).

PUBLIC

ARTICLE 2

Gibraltar shall apply a super-reduced rate of transaction tax of 0 % to goods falling within the following product categories:

– Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs (1).

– Supply of water (2).

– Pharmaceutical products used for medical and veterinary purposes, including products used for contraception and female sanitary protection, and absorbent hygiene products (3).

– Medical equipment, appliances, devices, items, aids and protective gear, including health protection masks, normally intended for use in health care or for the use of the disabled, goods essential to compensate and overcome disability (4).

– Supply, including on loan by libraries, of books, newspapers and periodicals either on physical means of support or supplied electronically, or both, (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts), other than publications wholly or predominantly devoted to advertising and other than publications wholly or predominantly consisting of video content or audible music; production of publications of non-profit-making organisations (6).

– Supply of solar panels to be installed on and adjacent to private dwellings, housing and public and other buildings used for activities in the public interest (10c).

PUBLIC

Appendix 2

PUBLIC

INDIRECT TAXATION IN GIBRALTAR: GOODS SUBJECT TO EXCISE DUTY AND MINIMUM UNION DUTY RATES UPON ENTRY INTO FORCE OF THIS AGREEMENT

SECTION 1

ETHYL ALCOHOL AND ALCOHOLIC BEVERAGES

Ethyl alcohol and alcoholic beverages shall be subject to excise duty. Ethyl alcohol and alcoholic beverages are:

(a) Beer, which covers any product falling within CN code 2203 or any product containing a mixture of beer with non-alcoholic drinks falling within CN code 2206, in either case with an actual alcoholic strength by volume exceeding 0,5 % vol.

(b) Still wine, which covers all products falling within CN codes 2204 and 2205, except sparkling wine as defined in No. 3, having an actual alcoholic strength by volume exceeding 1,2 % vol. but not exceeding 15 % vol., provided that the alcohol contained in the finished product is entirely of fermented origin, or having an actual alcoholic strength by volume exceeding 15 % vol and not exceeding 18 % vol provided they have been produced without any enrichment and that the alcohol contained in the finished product is entirely of fermented origin.

(c) Sparkling wine, which covers all products falling within CN codes 2204 10, 2204 21 06, 2204 21 07, 2204 21 08, 2204 21 09, 2204 29 10 and 2205 which are contained in bottles with "mushroom stoppers" held in place by ties or fastenings, or they have an excess pressure due to carbon dioxide in solution of three bar or more, and have an actual alcoholic strength by volume exceeding 1,2 % vol but not exceeding 15 % vol, provided that the alcohol contained in the finished product is entirely of fermented origin.

(d) Other still fermented beverages, without prejudice to No. 6, which covers all products falling within CN codes 2204 and 2205, but not mentioned in No. 2 and No. 3, and products falling within CN code 2206, except other sparkling fermented beverages as defined in No. 5 and any product covered by No. 1:

(i) having an actual alcoholic strength by volume exceeding 1,2 % vol but not exceeding 10 % vol;

(ii) having an actual alcoholic strength by volume exceeding 10 % vol but not exceeding 15 % vol, provided that the alcohol contained in the product is entirely of fermented origin.

(e) Other sparkling fermented beverages, without prejudice to No. 6, which covers all products falling within CN codes 2206 00 31 and 2206 00 39 as well as products falling within CN codes 2204 10, 2204 21 06, 2204 21 07, 2204 21 08, 2204 21 09, 2204 29 10 and 2205 not mentioned in No. 2 and No. 3, which:

(i) are contained in bottles with "mushroom stoppers" held in place by ties or fastenings, or they have an excess pressure due to carbon dioxide in solution of three bar or more;

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(ii) have an actual alcoholic strength by volume exceeding 1,2 % vol, but not exceeding 13 % vol;

(iii) have an actual alcoholic strength by volume exceeding 13 %, but not exceeding 15 % vol, provided that the alcohol contained in the product is entirely of fermented origin.

(f) Intermediate products, which covers all products of an actual alcoholic strength by volume exceeding 1,2 % vol, but not exceeding 22 % vol and falling within CN codes 2204, 2205 and 2206 but not covered in preceding numbers.

(g) Ethyl alcohol, which covers:

(i) all products with an actual alcoholic strength by volume exceeding 1,2 % vol which fall within CN code 2207 and 2208, even when those products form part of a product which falls within another chapter of the CN;

(ii) products of CN codes 2204, 2205 and 2206 which have an actual alcoholic strength by volume exceeding 22 % vol;

(iii) potable spirits containing products, whether in solution or not.

The minimum excise duty rates for ethyl alcohol and alcoholic beverages are:

(a) For beer EUR 1,87 per hectolitre/degree of alcohol of finished product; in assessing the charge to duty on beer, the United Kingdom, in respect of Gibraltar, may ignore fractions of a degree of actual alcoholic strength by volume,

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(b) For wine EUR 0 per hectolitre of finished product,

(c) For fermented beverages other than wine and beer EUR 0 per hectolitre of finished product,

(d) For intermediate products EUR 45 per hectolitre of finished product,

(e) For ethyl alcohol EUR 1 000 per hectolitre of pure alcohol at 20 °C, calculated by reference to the number of hectolitres of pure alcohol.

PUBLIC

SECTION 2

ELECTRICITY AND ENERGY PRODUCTS

1. Energy products and electricity shall be subject to excise duty. Energy products and electricity are those:

   (a) falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;

   (b) falling within CN codes 2701, 2702 and 2704 to 2715;

   (c) falling within CN codes 2901 and 2902;

(d) falling within CN code 2905 11 00, which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;

(e) falling within CN code 3403;

(f) falling within CN code 3811;

(g) falling within CN code 3817;

(h) falling within CN codes 3824 99 86, 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93, 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel;

(i) falling within CN code 2716.

2. When intended for use, offered for sale or used as motor fuel or heating fuel, energy products other than those for which a level of taxation is specified in this Annex shall be taxed according to use, at the rate for the equivalent heating fuel or motor fuel.

In addition to the taxable products listed in paragraph 1, any product intended for use, offered for sale or used as motor fuel, or as an additive or extender in motor fuels, shall be taxed at the rate for the equivalent motor fuel.

PUBLIC

In addition to the taxable products listed in paragraph 1, any other hydrocarbon, except for peat, intended for use, offered for sale or used for heating purposes shall be taxed at the rate for the equivalent energy product.

3. Minimum levels of taxation are as follows:

Table A. – Minimum levels of taxation applicable to motor fuels

Excise goods	Quantity
Leaded petrol CN codes 2710 12 31, 2710 12 51 and 2710 12 59	in euro per 1 000 l
Unleaded petrol CN codes 2710 12 31, 2710 12 41, 2710 12 45 and 2710 12 49	in euro per 1 000 l
Gas oil CN codes 2710 19 43 to 2710 19 48 and 2710 20 11 to 2710 20 19	in euro per 1 000 l
Kerosene CN codes 2710 19 21 and 2710 19 25	in euro per 1 000 l
LPG CN codes 2711 12 11 to 2711 19 00	in euro per 1 000 kg
Natural gas CN codes 2711 11 00 and 2711 21 00	in euro per gigajoule gross calorific value

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Table B. – Minimum levels of taxation applicable to motor fuels
used for the following industrial and commercial purposes:

(a) agricultural, horticultural or piscicultural works, and in forestry;

(b) stationary motors;

(c) plant and machinery used in construction, civil engineering and public works;

(d) vehicles intended for use off the public roadway or which have not been granted authorisation for use mainly on the public roadway.

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Goods	Quantity	Minimal tax
Gas oil CN codes 2710 19 43 to 2710 19 48 and 2710 20 11 to 2710 20 19	in euro per 1 000 l	21
Kerosene CN codes 2710 19 21 and 2710 19 25	in euro per 1 000 l	21
LPG CN codes 2711 12 11 to 2711 19 00	in euro per 1 000 kg	41
Natural gas CN codes 2711 11 00 and 2711 21 00	in euro per gigajoule gross calorific value	0,3

Table C. – Minimum levels of taxation applicable to heating fuels and electricity

Goods	Quantity	Minimal tax	
		Business use	Non-business use
Gas oil CN codes 2710 19 43 to 2710 19 48 and 2710 20 11 to 2710 20 19	in euro per 1 000 l	21	21
Heavy fuel oil CN codes 2710 19 62 to 2710 19 68 and 2710 20 31 to 2710 20 39	in euro per 1 000 kg	15	15
Kerosene CN codes 2710 19 21 and 2710 19 25	in euro per 1 000 l	0	0
LPG CN codes 2711 12 11 to 2711 19 00	in euro per 1 000 kg	0	0
Natural gas CN codes 2711 11 00 and 2711 21 00	in euro per gigajoule gross calorific value	0,15	0,3
Coal and coke CN codes 2701, 2702 and 2704	in euro per gigajoule gross calorific value	0,15	0,3
Electricity CN code 2716	in euro per MWh	0,5	1,0

For energy products specified in the tables, with levels of taxation based on volumes, the volume is measured at a temperature of 15 °C.

PUBLIC

4. "Business use" means the use by a business entity, identified in accordance with paragraph 2, which independently carries out, in any place, the supply of goods and services, whatever the purpose or results of such economic activities.

The economic activities comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions.

States, regional and local government authorities and other bodies governed by public law shall not be considered as business entities in respect of the activities or transactions in which they engage as public authorities. However, when they engage in such activities or transactions, they shall be considered as a business in respect of these activities or transactions where treatment as a non-business would lead to significant distortions of competition.

5. The business entity cannot be considered as smaller than a part of an enterprise or a legal body that from an organisational point of view constitutes an independent business, that is to say an entity capable of functioning by its own means.

6. Where mixed use takes place, taxation shall apply in proportion to each type of use, although where either the business or non-business use is insignificant, it may be treated as nil.

7. The United Kingdom, in respect of Gibraltar, may limit the scope of the reduced level of taxation for business use.

PUBLIC

SECTION 3

MANUFACTURED TOBACCO

PUBLIC

1. Manufactured tobacco shall be subject to excise duties. Manufactured tobacco are:

   (a) cigarettes;

   (b) cigars and cigarillos;

   (c) smoking tobacco:

      (i) fine-cut tobacco for the rolling of cigarettes;

      (ii) other smoking tobacco.

2. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria of cigarettes, cigars, cigarillos and smoking tobacco respectively shall be treated as cigarettes, cigars, cigarillos and smoking tobacco.

3. Cigarettes shall be subject to an ad valorem excise duty calculated on the maximum retail selling price, including customs duties, and also to a specific excise duty (of between 7,5 % and 76,5 % of the total tax burden) calculated per unit of the product.

The overall excise duty (specific duty and ad valorem duty excluding VAT) shall not be less than EUR 115 per 1 000 cigarettes. The price difference resulting from the applicable overall excise duty shall not exceed EUR 0,80 or 15 % per packet of cigarettes, whichever leads to the lower price differential.

The rate of the ad valorem excise duty and the amount of the specific excise duty must be the same for all cigarettes.

4. The minimum excise duty for manufactured tobacco other than cigarettes shall be:

(a) either an ad valorem duty calculated on the basis of the maximum retail selling price of each product; or

(b) a specific duty expressed as an amount per kilogram, or in the case of cigars and cigarillos, alternatively for a given number of items; or

(c) a mixture of both, combining an ad valorem element and a specific element.

5. The overall excise duty (specific duty and ad valorem duty excluding transaction tax), expressed as a percentage, as an amount per kilogram or for a given number of items, shall be at least equivalent to the rates or minimum amounts laid down for:

(a) cigars or cigarillos: 15 % of the retail selling price inclusive of all taxes or EUR 12 per 1 000 items or per kilogram;

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(b) fine-cut smoking tobacco intended for the rolling of cigarettes: 50 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or EUR 60 per kilogram;

(c) other smoking tobacco: 20 % of the retail selling price inclusive of all taxes, or EUR 22 per kilogram.

6. For the purposes of paragraphs 3 and 5 the weighted average retail selling price of cigarettes and fine-cut smoking tobacco intended for the rolling of cigarettes shall be calculated by reference to the total value of all cigarettes and fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, based on the retail selling price including all taxes, divided by the total quantity of cigarettes and fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption. It shall be determined by 1 March at the latest of each year on the basis of data relating to all such releases for consumption made in the preceding calendar year.

7. The rates referred to in paragraphs 4 and 5 shall be effective for all products belonging to the group of manufactured tobacco concerned, without distinction within each group as to quality, presentation, origin of the products, the materials used, the characteristics of the firms involved or any other criterion.

8. The competent authorities of the United Kingdom, in respect of Gibraltar, shall provide statistical data on the structure and rates of excise duty applied on manufactured tobacco. Article 6 of this Agreement does not apply.

PUBLIC

ANNEX 25

AVIATION

List of Union law referred to in Article 273 of the Agreement:

– Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports (OJ L 14, 22.1.1993, p. 1),

  Amended by: Regulation (EC) No 793/2004 of the European Parliament and of the Council of 21 April 2004 (OJ L 138, 30.4.2004, p. 50),

– Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports (OJ L 272, 25.10.1996, p. 36),

  Amended by: Decision (EU) 2024/1254 of the European Parliament and of the Council of 24 April 2024 amending Directives 2009/12/EC, 2009/33/EC and (EU) 2022/1999 of the European Parliament and of the Council and Council Directive 96/67/EC as regards certain reporting requirements in the fields of road transport and aviation (OJ L, 2024/1254, 30.4.2024),

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– Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ L 70, 14.3.2009, p. 11),

Amended by: Decision (EU) 2024/1254 of the European Parliament and of the Council of 24 April 2024 amending Directives 2009/12/EC, 2009/33/EC and (EU) 2022/1999 of the European Parliament and of the Council and Council Directive 96/67/EC as regards certain reporting requirements in the fields of road transport and aviation (OJ L, 2024/1254, 30.4.2024),

– Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the right of disabled persons and persons with reduced mobility when travelling by air (OJ L 204, 26.7.2006, p. 1).

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ANNEX 26

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LIST OF ESTABLISHMENTS
REFERRED TO IN ARTICLE 276 OF THE AGREEMENT

LIST OF HEALTH SERVICE PROVIDERS:

1. "Cidat", La Linea de la Concepcion.

2. "Hospital Quironsalud Campo de Gibraltar", Palmones.

3. "Scanner Sur", Algeciras.

4. "Hospital Punta de Europa", Algeciras.

5. "Vithas Xanit International Hospital", Benalmadena.

6. "Vithas Hospital Parque San Antonio", Malaga.

7. "HLA Hospital Jerez Puerta del Sur", Jerez.

ANNEX 27

PUBLIC

TRANSPORT OF GOODS BY ROAD

PART A

REQUIREMENTS FOR ROAD HAULAGE OPERATORS:
ADMISSION TO, AND THE PURSUIT OF,
THE OCCUPATION OF ROAD HAULAGE OPERATOR

ARTICLE 1

Scope

This Part A governs admission to, and the pursuit of, the occupation of road haulage operator and shall apply to all road haulage operators of a Party engaged in the transport of goods within the scope of Articles 276 and 277 of this Agreement.

ARTICLE 2

Definitions

For the purposes of this Part A, the following definitions apply:

(a) "authorisation to pursue the occupation of road haulage operator" means an administrative decision which authorises a natural or legal person who fulfils the conditions laid down in this Section to pursue the occupation of road haulage operator;

(b) "competent authority" means a national, regional or local authority in a Party which, for the purpose of authorising the pursuit of the occupation of road haulage operator, verifies whether a natural or legal person fulfils the conditions laid down in this Section, and which is empowered to grant, suspend or withdraw an authorisation to pursue the occupation of road haulage operator; and

(c) "normal residence" means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal ties which show close links between that person and the place where that person is living.

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ARTICLE 3

Requirements for engagement in the occupation of road haulage operator

Natural or legal persons engaged in the occupation of road haulage operator shall:

(a) have an effective and stable establishment in a Party as laid down in Article 5 of this Part;

(b) be of good repute as laid down in Article 6 of this Part;

(c) have appropriate financial standing as laid down in Article 7 of this Part; and

(d) have the requisite professional competence as laid down in Article 8 of this Part.

ARTICLE 4

Transport manager

1. A road haulage operator shall designate at least one natural person to be the transport manager, who effectively and continuously manages its transport activities and fulfils the requirements set out in points (b) and (d) of Article 3 and who:

(a) has a genuine link to the road haulage operator, such as being an employee, director, owner or shareholder or administering it, or is that person; and

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(b) is resident in the Party in the territory of which the road haulage operator is established.

2. If a natural or legal person does not fulfil the requirement of professional competence, the competent authority may authorise the natural or legal person to engage in the occupation of road haulage operator without designating a transport manager in accordance with paragraph 1, provided that:

(a) the natural or legal person designates a natural person residing in the Party of establishment of the road haulage operator who fulfils the requirements laid down in points (b) and (d) of Article 3 and who is entitled under contract to carry out duties as transport manager on behalf of the undertaking;

(b) the contract linking the natural or legal person with the person referred to in point (a) specifies the tasks to be performed on an effective and continuous basis by that person and indicates that person's responsibilities as transport manager. The tasks to be specified shall comprise, in particular, those relating to vehicle maintenance management, verification of transport contracts and documents, basic accounting, the assignment of loads or services to drivers and vehicles, and the verification of safety procedures;

(c) in his or her capacity as transport manager, the person referred to in point (a) may manage the transport activities of up to four different road haulage operators carried out with a combined maximum total fleet of 50 vehicles; and

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(d) the person referred to in point (a) performs the specified tasks solely in the interests of the natural or legal person and that person's responsibilities are exercised independently of any natural or legal persons for which it carries out transport operations.

3. A Party may decide that a transport manager designated in accordance with paragraph 1 may not in addition be designated in accordance with paragraph 2,or may only be so designated in respect of a limited number of natural or legal persons or a fleet of vehicles that is smaller than that referred to in point (c) of paragraph 2.

4. The natural or legal person shall notify the competent authority of the transport manager or managers designated.

ARTICLE 5

Conditions relating to the requirement of establishment

In order to fulfil the requirement of effective and stable establishment in the Party of establishment, a natural or legal person shall:

(a) have premises at which it is able to access the originals of its core business documents, whether in electronic or any other form in particular its transport contracts, documents relating to the vehicles at the disposal of the natural or legal person, accounting documents, personnel management documents, labour contracts, social security documents, documents containing data relating to journeys, driving time and rest periods, and any other document to which the competent authority must have access in order to verify compliance with the conditions laid down in this Part;

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(b) be registered in the register of commercial companies of that Party or in a similar register whenever required under national law;

(c) be subject to tax on revenues and, whenever required under national law, have assigned a VAT identification number;

(d) once an authorisation has been granted, have at its disposal one or more vehicles which are registered or put into circulation and authorised to be used in conformity with the legislation of that Party, regardless of whether those vehicles are wholly owned or, for example, are held under a hire-purchase agreement or under a hire or leasing contract;

(e) effectively and continuously conduct its administrative and commercial activities with the appropriate equipment and facilities at premises as referred to in point (a) situated in that Party and manage effectively and continuously its transport operations using the vehicles referred to in point (f) with the appropriate technical equipment situated in that Party; and

(f) on an ongoing basis, have at its regular disposal a number of vehicles complying with the conditions laid down in point (d) and drivers normally based at an operational centre in that Party, proportionate to the volume of transport operations carried out by the undertaking.

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ARTICLE 6

Conditions relating to the requirement of good repute

1. Subject to paragraph 2, the Parties shall determine the conditions to be met by natural or legal persons and transport managers in order to fulfil the requirement of good repute.

In determining whether a natural or legal person has fulfilled that requirement, the Parties shall consider the conduct of the natural or legal person, its transport managers, executive directors and any other relevant person as may be determined by the Party. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the natural or legal person itself, its transport managers, executive directors and any other relevant person as may be determined by the Party.

The conditions referred to in this paragraph shall include at least the following:

(a) that there be no compelling grounds for doubting the good repute of the transport manager or the road haulage operator, such as convictions or penalties for any serious infringement of national rules in force in the fields of:

(i) commercial law;

(ii) insolvency law;

(iii) pay and employment conditions in the profession;

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(iv) road traffic;

(v) professional liability;

(vi) trafficking in human beings or drugs;

(vii) tax law; and

(b) that the transport manager or the road haulage operator have not in one or both Parties been convicted of a serious criminal offence or incurred a penalty for a serious infringement of the rules of Articles 278 to 282 of this Agreement or of national rules relating in particular to:

(i) the driving time and rest periods of drivers, working time and the installation and use of recording equipment;

(ii) the maximum weights and dimensions of commercial vehicles used in international traffic;

(iii) the initial qualification and continuous training of drivers;

(iv) the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;

(v) access to the market in international road haulage;

(vi) safety in the carriage of dangerous goods by road;

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(vii) the installation and use of speed-limiting devices in certain categories of vehicle;

(viii) driving licences;

(ix) admission to the occupation;

(x) animal transport;

(xi) the posting of workers in road transport;

(xii) the law applicable to contractual obligations; and

(xiii) journeys whose points of loading and unloading are situated in the other Party.

2. For the purposes of point (b) of the third subparagraph of paragraph 1 of this Article, where the transport manager or the road haulage operator has been convicted of a serious criminal offence or has incurred a penalty for one of the most serious infringements as set out in Appendix X-A-1-1 in one or both Parties, the competent authority in the Party of establishment shall carry out and complete in an appropriate and timely manner an administrative procedure, which shall include, if appropriate, an on-site inspection at the premises of the natural or legal person concerned.

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During the administrative procedure, the competent authority shall assess whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. In that assessment, the competent authority shall take into account the number of serious infringements of the rules as referred to in the third subparagraph of paragraph 1 of this Article, as well as the number of most serious infringements as set out in Appendix X-A-1-1 for which the transport manager or the road haulage operator have been convicted or had penalties imposed on them. Any such finding shall be duly reasoned and justified.

Where the competent authority finds that the loss of good repute would be disproportionate, it shall decide that the natural or legal person concerned continues to be of good repute. Where the competent authority does not find that the loss of good repute would be disproportionate, the conviction or penalty shall lead to the loss of good repute.

3. In addition to the list of most serious infringements set out in Appendix X-A-1-1, serious infringements set out in Appendix X-A-1-1bis may lead to the loss of good repute.

4. The requirement of good repute shall not be fulfilled until a rehabilitation measure or any other measure having an equivalent effect has been taken pursuant to the relevant provisions of national law of the Parties.

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ARTICLE 7

Conditions relating to the requirement of financial standing

1. In order to fulfil the requirement of financial standing, a natural or legal person shall, on a permanent basis, be able to meet its financial obligations in the course of the annual accounting year. The natural or legal person shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, it has at its disposal capital and reserves:

(a) totalling at least EUR 9 000 / GBP 8 000 when only one motor vehicle is used, EUR 5 000 / GBP 4 500 for each additional motor vehicle or combination of vehicles used that has a permissible laden mass exceeding 3,5 tonnes and EUR 900 / GBP 800 for each additional motor vehicle or combination of vehicles that has a permissible laden mass, exceeding 2,5 tonnes but not 3,5 tonnes;

(b) natural or legal persons engaged in the occupation of road haulage operator solely by means of motor vehicles or combinations of vehicles that have a permissible laden mass exceeding 2,5 tonnes but not 3,5 tonnes shall demonstrate, on the basis of annual accounts certified by an auditor or a duly accredited person, that, every year, they have at their disposal capital and reserves totalling at least EUR 1 800 / GBP 1 600 when only one vehicle is used and EUR 900 / GBP 800 for each additional vehicle used.

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2. By way of derogation from paragraph 1, the competent authority may agree or require that an undertaking demonstrate its financial standing by means of a certificate determined by the competent authority, such as a bank guarantee or an insurance, including a professional liability insurance from one or more banks or other financial institutions including insurance companies or another binding document providing a joint and several guarantee for the undertaking in respect of the amounts specified in point (a) of paragraph 1.

3. By way of derogation from paragraph 1, in the absence of certified annual accounts for the year of an undertaking's registration, the competent authority shall agree that an undertaking is to demonstrate its financial standing by means of a certificate, such as a bank guarantee, a document issued by a financial institution establishing access to credit in the name of the undertaking, or another binding document as determined by the competent authority proving that the undertaking has at its disposal the amounts specified in point (a) of paragraph 1.

4. The annual accounts referred to in paragraph 1, and the guarantee referred to in paragraph 2, which are to be verified, are those of the economic entity established in the Party in which an authorisation has been applied for and not those of any other entity established in the other Party.

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ARTICLE 8

Conditions relating to the requirement of professional competence

1. In order to satisfy the requirement of professional competence, the person or persons concerned shall possess knowledge corresponding to the level provided for in Part I of Appendix X-A-1-2 in the subjects listed therein. That knowledge shall be demonstrated by means of a compulsory written examination which, if a Party so decides, may be supplemented by an oral examination. Those examinations shall be organised in accordance with Part II of Appendix X-A-1-2. To this end, a Party may decide to impose training prior to the examination.

2. The persons concerned shall sit the examination in the Party in which they have their normal residence.

3. Only the authorities or bodies duly authorised for this purpose by a Party, in accordance with criteria defined by it, may organise and certify the written and oral examinations referred to in paragraph 1 of this Article. The Parties shall regularly verify that the conditions under which those authorities or bodies organise the examinations are in accordance with Appendix X-A-1-2.

4. A Party may exempt the holders of certain higher education qualifications or technical education qualifications issued in that Party, specifically designated to this end and entailing knowledge of all the subjects listed in Appendix X-A-1-2 from the examination in the subjects covered by those qualifications. The exemption shall only apply to those Sections of Part I of Appendix X-A-1-2 for which the qualification covers all subjects listed under the heading of each Section.

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A Party may exempt from specified parts of the examinations holders of certificates of professional competence valid for national transport operations in that Party.

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ARTICLE 9

Exemption from examination

For the purpose of granting a licence to a road haulage operator which only operates motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3,5 tonnes, a Party may decide to exempt from the examinations referred to in Article 8(1) persons who provide proof that they have continuously managed, for the period of ten years before 20 August 2020, a natural or legal person of the same type.

ARTICLE 10

Procedure for the suspension and withdrawal of authorisations

1. Where a competent authority establishes that a natural or legal person runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the natural or legal person thereof. Where a competent authority establishes that one or more of those requirements is no longer satisfied, it may set one of the following time limits for the natural or legal person to rectify the situation:

(a) a time limit not exceeding 6 months, which may be extended by 3 months in the event of the death or physical incapacity of the transport manager, for the recruitment of a replacement transport manager where the transport manager no longer satisfies the requirement as to good repute or professional competence;

(b) a time limit not exceeding 6 months where the natural or legal person has to rectify the situation by demonstrating that the natural or legal person has an effective and stable establishment; or

(c) a time limit not exceeding 6 months where the requirement of financial standing is not satisfied, in order to demonstrate that that requirement is again satisfied on a permanent basis.

2. The competent authority may require a natural or legal person whose authorisation has been suspended or withdrawn to ensure that its transport managers have passed the examinations referred to in Article 8(1) prior to any rehabilitation measure being taken.

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3. If the competent authority establishes that the natural or legal person no longer satisfies one or more of the requirements laid down in Article 3, it shall suspend or withdraw the authorisation to engage in the occupation of road haulage operator within the time limits referred to in paragraph 1 of this Article.

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ARTICLE 11

Declaration of unfitness of the transport manager

1. Where a transport manager loses good repute in accordance with Article 6, the competent authority shall declare that transport manager unfit to manage the transport activities of a road haulage operator.

The competent authority shall not rehabilitate the transport manager earlier than one year from the date of the loss of good repute and before the transport manager has demonstrated to have followed appropriate training for a period of at least 3 months or an exam on the subjects listed in Part I of Appendix X-A-1-2.

2. Where a transport manager loses good repute in accordance with Article 6, an application for rehabilitation may be introduced after no less than one year from the date of the loss of good repute.

ARTICLE 12

Examination and registration of applications

1. The competent authorities in each Party shall record in the national electronic registers referred to in Article 13(1) the data relating to undertakings which they authorise.

2. When assessing the good repute of an undertaking, the competent authorities shall verify, whether at the time of the application the designated transport manager or managers are declared, in one of the Parties, unfit to manage the transport activities of an undertaking pursuant to Article 11.

3. The competent authorities shall regularly monitor whether undertakings which they have authorised to engage in the occupation of road haulage operators continue to fulfil the requirements referred to in Article 3. To that end, the competent authorities shall carry out checks, including, where appropriate, on-site inspections at the premises of the undertaking concerned, targeting those undertakings which are classed as posing an increased risk.

ARTICLE 13

National electronic registers

1. The competent authorities shall keep a national electronic register of road transport undertakings which have been authorised to engage in the occupation of road haulage operator.

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2. The data contained in the national registers of road transport undertakings and the conditions of access to this data are set out in Appendix X-A-1-5.

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ARTICLE 14

Administrative cooperation between the competent authorities

1. The competent authorities in each Party shall designate a national contact point responsible for the exchange of information with the competent authorities of the other Party with regard to the application of this Part.

2. The competent authorities in each Party shall cooperate closely and shall swiftly provide one another with mutual assistance and with any other relevant information in order to facilitate the implementation and enforcement of this Part.

3. The competent authorities in each Party shall carry out individual checks to verify whether an undertaking meets the conditions governing admission to the occupation of road haulage operator whenever a competent authority in the other Party so requests in duly justified cases. It shall inform the competent authority in the other Party of the results of such checks and of the measures taken if it is established that the undertaking no longer fulfils the requirements laid down in this Part.

4. The competent authorities in each Party shall exchange information on convictions and penalties for any serious infringements referred to in Article 6(2).

5. The detailed rules on the modalities of the exchange of information referred to in paragraphs 3 and 4 are set out in Appendix XXXXXX.

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MOST SERIOUS INFRINGEMENTS
FOR THE PURPOSE OF ARTICLE 6(2) OF PART A OF ANNEX X

1. Exceeding time limits as follows:

   (a) exceeding the maximum 6-day or fortnightly driving time limits by margins of 25 % or more;

   (b) exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more.

2. Not having a tachograph and/or speed limiter, or having in the vehicle and/or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.

3. Driving without a valid roadworthiness certificate and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle.

4. Transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle.

5. Carrying goods without holding a valid driving licence or carrying by an undertaking not holding a valid operator's licence as referred to in Article 278 of this Agreement.

6. Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents.

7. Carrying goods exceeding the maximum permissible laden mass by 20 % or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25 % or more for vehicles the permissible laden weight of which does not exceed 12 tonnes.

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LIST OF SERIOUS INFRINGEMENTS
FOR THE PURPOSE OF ARTICLE 6(2) OF PART A OF ANNEX X

The following tables contain categories and types of serious infringements against Annex X to the Trade and Cooperation Agreement, divided into three categories of seriousness according to their potential to create a risk of fatalities or serious injuries and/or distorting competition in the road transport market: most serious infringement (MSI), very serious infringement (VSI) and serious infringement (SI).

(1) Groups of infringements against Section 2 of Part B of Annex 31 to the Trade and Cooperation Agreement, unless stated otherwise

	LEGAL BASIS	TYPE OF INFRINGEMENT		LEVEL OF SERIOUSNESS		
				MSI	VSI	SI
Driving periods						
1.	Article 4(1) and Appendix 31-A-1-1	Exceed daily driving time of 9h if possibilities to extend to 10h not allowed	10h ≤ … < 11h			X
2.			11h ≤ …		X	
3.		Exceed daily driving time of 9h by 50 % or more	13h30 ≤ …	X		
4.		Exceed extended daily driving time of 10h if extension allowed	11h ≤ … < 12h			X
5.			12h ≤ …		X	
6.		Exceed daily driving time of 10h by 50 % or more	15h ≤ …	X		

	LEGAL BASIS	TYPE OF INFRINGEMENT		LEVEL OF SERIOUSNESS		
				MSI	VSI	SI
7.	Article 4(2) and Appendix 31-A-1-1	Exceed weekly driving time	60h ≤ … < 65h			X
8.			65h ≤ … < 70h		X	
9.		Exceed weekly driving time by 25 % or more	70h ≤ …	X		
10.	Article 4(3) and Appendix 31-A-1-1	Exceed maximum total driving time during 2 consecutive weeks	100h ≤ … < 105h			X
11.			105h ≤ … < 112h30		X	
12.		Exceed maximum total driving time during 2 consecutive weeks by 25 % or more	112h30 ≤ …	X		
Breaks						
13.	Article 5	Exceed uninterrupted driving time of 4,5 hours before taking the break	5h ≤ … < 6h			X
14.			6h ≤ …		X	
Rest Periods						
15.	Article 6(2)	Insufficient daily rest period of less than 11h if reduced daily rest period not allowed	8h30 ≤ … < 10h			X
16.			… < 8h30		X	
17.		Insufficient reduced daily rest period of less than 9h if reduction allowed	7h ≤ … < 8h			X
18.			… < 7h		X	
19.		Insufficient split daily rest period of less than 3h + 9h	3h + [7h ≤ …< 8h]			X
20.			3h + [… < 7h]		X	

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	LEGAL BASIS	TYPE OF INFRINGEMENT		LEVEL OF SERIOUSNESS		
				MSI	VSI	SI
21.	Article 6(5)	Insufficient daily rest period of less than 9h for multi-manning	7h ≤ … < 8h			X
22.			… < 7h		X	
23.	Article 6(6)	Insufficient reduced weekly resting period of less than 24h	20h ≤ … < 22h			X
24.			… < 20h		X	
25.		Insufficient weekly resting period of less than 45h if reduced weekly resting period not allowed	36h ≤ … < 42h			X
26.			… < 36h		X	
27.		Exceeding 6 consecutive 24-hour periods following the previous weekly rest period	3h ≤ … < 12h			X
28.			12h ≤ …		X	
29.	Article 6(7)	No compensation rest for two consecutive reduced weekly rest periods			X	
30.	Article 6(9)	Regular weekly rest period or any weekly rest period of more than 45 hours taken in a vehicle			X	
31.		The employer not covering costs for accommodation outside the vehicle				X
Work organisation						
32.	Article 6(10)	Transport undertaking not organising the work of drivers in such a way that the drivers are able to return to the employer's operational centre, or to return to the drivers' place of residence			X	
33.	Article 7(1)	Link between wage/payment and distance travelled, speed of delivery and/or amount of goods carried			X	
34.	Article 7(2)	No or improper organisation of driver's work, no or improper instructions given to driver enabling him to comply with the law			X	

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(2) Groups of infringements against Section 4 of Part B and Section 2 of Part C of Annex 31 to the Trade and Cooperation Agreement

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
Installation of tachograph					
1.	Articles 3 and 5 of Section 2 of Part C and Appendix 31-A-1-1	Not having type-approved tachograph installed and used	X		
Use of tachograph, driver card or record sheet					
2.	Article 6(1) of Section 2 of Part C	Using a tachograph not inspected by an approved workshop		X	
3.	Article 3 of Section 4 of Part B and Appendix 31-A-1-1	Driver holding and/or using more than one own driver card		X	
4.		Driving with a driver card that has been falsified (considered as driving without driver card)	X		
5.		Driving with a driver card of which the driver is not the holder (considered as driving without driver card)	X		
6.		Driving with a driver card which has been obtained on the basis of false declarations and/or forged documents (considered as driving without driver card)	X		
7.	Article 7(1) of Section 4 of Part B and Article 15(1) of Section 2 of Part C	Tachograph not correctly functioning (e.g.: tachograph not properly inspected, calibrated and sealed)		X	
8.		Tachograph improperly used (e.g.: deliberate, voluntary or imposed misuse, lack of instructions on correct use, etc.)		X	

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	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
9.	Article 7(2) of Section 4 of Part B and Appendix 31-A-1-1	Having in the vehicle and/or using a fraudulent device able to modify the records of the tachograph	X		
10.		Falsifying, concealing, supressing or destroying data recorded on the record sheets or stored and downloaded from the tachograph and/or the driver card	X		
11.	Article 15(2) of Section 2 of Part C	Undertaking not keeping record sheets, printouts and downloaded data		X	
12.		Recorded and stored data not available for at least a year		X	
13.	Article 6(1) of Section 4 of Part B	Incorrect use of record sheets/driver card		X	
14.		Unauthorised withdrawal of record sheets or driver card which has an impact on the record of relevant data		X	
15.		Record sheet or driver card used to cover a period longer than that for which it is intended, and data is lost		X	
16.	Article 6(2) of Section 4 of Part B	Use dirty or damaged record sheets or drivers card and data not legible		X	
17.	Article 6(3) of Section 4 of Part B	Not using manual input when required to do so		X	
18.	Article 6(4) of Section 4 of Part B	Not using correct record sheet or driver card not in the correct slot (multi-manning)			X

PUBLIC

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
19.	Article 6(5) of Section 4 of Part B	Incorrect use of switch mechanism		X	
Producing information					
20.	Article 6(5), point (b)(v) of Section 4 of Part B	Incorrect use or non-use of the ferry/train sign			X
21.	Article 6(6) of Section 4 of Part B	Required information not entered on the record sheet		X	
22.	Article 6(7) of Section 4 of Part B	Records not showing the symbols of the countries whose borders were crossed by the driver during the daily working period			X
23.	Article 6(7) of Section 4 of Part B	Records not showing the symbols of the countries where the driver's daily working period started and finished			X
24.	Article 10 of Section 4 of Part B	Refusing to be checked		X	
25.		Unable to produce manual records and printouts made during the current day and the previous 56 days		X	
26.		Unable to produce a driver card, if the driver holds one		X	
Malfunctioning					
27.	Article 16(1) and Article 5(1) of Section 2 of Part C	Tachograph not repaired by an approved fitter or workshop		X	
28.	Article 11 of Section 4 of Part B	Driver not marking all required information for the periods of time, which are no longer recorded while tachograph is unserviceable or malfunctioning		X	

PUBLIC

(3) Groups of infringements against Section 3 of Part B of Annex 31 to the Trade and Cooperation Agreement

	LEGAL BASIS	TYPE OF INFRINGEMENT		LEVEL OF SERIOUSNESS		
				MSI	VSI	SI
Maximum weekly working time						
1.	Article 3	Exceeding maximum weekly working time of 48h if possibilities to extend to 60h already consumed	56h ≤ … 60h			X
2.			60h ≤ …		X	
3.		Exceeding maximum weekly working time of 60h if no derogation under Article 7 granted	65 ≤ … < 70h			X
4.			70h ≤ …		X	
Breaks						
5.	Article 4	Insufficient obligatory break taken when working time between 6 and 9 hours	10 < … ≤ 20 min			X
6.			… ≤ 10 min		X	
7.		Insufficient obligatory break taken when working time over 9 hours	20 < … ≤ 30min			X
8.			… ≤ 20 min		X	
Night work						
9.	Article 6	Daily working time in each 24h when night work performed if no derogation under Article 7 granted	11h ≤ … < 13h			X
10.			13h ≤ …		X	
Records						
11.	Article 8	Employers falsifying working time records or refusing to provide records to inspection officer			X	
12.		Employed/self-employed drivers falsifying records or refusing to provide records to inspection officer			X	

PUBLIC

(4) Groups of infringements against Section 1 of Part C of Annex 31 to the Trade and Cooperation Agreement

	LEGAL BASIS	TYPE OF INFRINGEMENT		LEVEL OF SERIOUSNESS		
				MSI	VSI	SI
Weights						
1.	Article 1 and Appendix 31-A-1-1	Exceed maximum permissible weights for N3 vehicles	5 % ≤ … < 10 %			X
2.			10 % ≤ … < 20 %		X	
3.			20 % ≤ …	X		
4.		Exceed maximum permissible weight for N2 vehicles	5 % ≤ … < 15 %			X
5.			15 % ≤ … < 25 %		X	
6.			25 % ≤ …	X		
Lengths						
7.	Article 1	Exceed maximum permissible length	2 % < … < 20 %			X
8.			20 % ≤ …		X	
Width						
9.	Article 1	Exceed maximum permissible width	2,65 ≤ … < 3,10 metres			X
10.			3,10 metres ≤ …		X	

PUBLIC

(5) Groups of infringements against rules on Technical roadside inspection

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
Roadworthiness					
1.	Annex 31, Part A, Section 1, Article 6(1)(b)(iv) and Appendix 31-A-1-1	Driving without a valid proof of roadworthiness tests passed, as required by the EU and UK law	X		
2.		Not keeping a vehicle in a safe and roadworthy condition resulting in a very serious deficiency of the braking system, the steering linkages, the wheels/tires, the suspension or chassis or other equipment that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle	X		

(6) Groups of infringements against rules on Speed limitation devices

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Annex 31, Part A, Section 1, Article 6(1)(b)(vii)	Speed limitation device not fitted	X		
2.		Speed limitation device not satisfying the applicable technical requirements		X	
3.		Speed limitation device not fitted by an approved workshop			X
4.		Having and/or using a fraudulent device able to falsify data of speed limitation device or having and/or using a fraudulent speed limitation device	X		

PUBLIC

(7) Groups of infringements against Section 1 of Part B of Annex 31 to the Trade and Cooperation Agreement

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
Training and Licence					
1.	Article 3	Carrying goods without a compulsory initial qualification and/or compulsory periodic training		X	
2.	Article 9 and Appendix 31-B-1-2	Driver unable to present the valid qualification card or the driving licence with the marking, as required by the national law (e.g.: lost, forgotten, damaged, unreadable)			X

(8) Groups of infringements against driving licence requirements

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Annex 31, Part A, Section 1, Article 6(1)(b)(viii) and Appendix 31-A-1-1	Carrying goods without holding a valid driving licence	X		
2.		Using a driving licence which is damaged or unreadable or not in line with common model			X

PUBLIC

(9) Groups of infringements against rules on transport of dangerous goods by road

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Annex 31, Part A, Section 1, Article 6(1)(b)(vi) and Appendix 31-A-1-1	Transporting dangerous goods that are prohibited for transport	X		
2.		Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle	X		
3.		Transporting dangerous goods without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle	X		
4.		Leakage of dangerous substances		X	
5.		Carriage in bulk in a container which is not structurally serviceable		X	
6.		Carriage in a vehicle without an appropriate certificate of approval		X	
7.		Vehicle no longer complies with the approval standards and presents an immediate danger		X	

PUBLIC

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
8.		The rules governing the securing and stowage of the load have not been complied with		X	
9.		The rules governing mixed loading of packages have not been complied with		X	
10.		The provisions limiting the quantities carried in one transport unit have not been complied with, including permissible degrees of filling tanks or packages;		X	
11.		Information relevant to the substance being carried enabling determination of level of seriousness of offence is missing (e.g. UN number, proper shipping name, packing group)		X	
12.		Driver does not hold a valid vocational training certificate		X	
13.		Fire or an unprotected light is being used		X	
14.		The ban on smoking is not being observed.		X	
15.		The vehicle is not properly supervised or parked			X
16.		The transport unit comprises more than one trailer/semi-trailer			X
17.		Vehicle no longer complies with the approval standards but does not present an immediate danger			X
18.		The vehicle is not carrying operational fire extinguishers as required			X

PUBLIC

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
19.		The vehicle does not carry the equipment required in the ADR or in the instructions in writing			X
20.		Packages with damaged packaging, IBCs or large packaging or damaged uncleaned empty packaging are being carried			X
21.		Carriage of packaged goods in a container which is not structurally serviceable			X
22.		Tanks/tank containers (including ones that are empty and uncleaned) have not been closed properly			X
23.		Incorrect labelling, marking or placarding on the vehicle and/or containment			X
24.		There are no instructions in writing conforming to the ADR, or the instructions in writing are not relevant to the goods carried			X

PUBLIC

(10) Groups of infringements against Title I of Heading Three of Part Two of the Trade and Cooperation Agreement, unless stated otherwise

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
Licence					
1.	Article 463(1) and Appendix 31-A-1-1	Carrying goods without holding a valid licence (i.e.: a licence is non-existent, falsified, withdrawn, expired, etc.)	X		
2.	Article 463(3)	The haulage undertaking or the driver unable to present a valid licence or a valid certified true copy of the licence to the inspecting officer (i.e.: licence or certified true copy of the licence lost, forgotten, damaged, etc.)		X	
Driver attestation					
3.	Annex 31, Part A, Section 1, Article 6(1)(b)(v)	Drivers carrying goods without holding a valid driver attestation (i.e. driver's attestation is non-existent, falsified; withdrawn, expired, etc.)		X	
4.	Annex 31, Part A, Section 1, Article 6(1)(b)(v)	The driver or the haulage undertaking unable to present a valid driver attestation or a valid certified true copy of the driver attestation to the inspecting officer (i.e. driver attestation or certified true copy of the driver attestation lost, forgotten, damaged, etc.)			X
Specific transport operations allowed under the Trade and Cooperation Agreement					
5.	Paragraphs 3 to 7 of Article 462	Carrying out cabotage or other transport operations not in compliance with the laws, regulations and administrative provisions, including limitations on the number of journeys, in force in the host Party.		X	

PUBLIC

(11) Groups of infringements against rules on animal transport

	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Annex 31, Part A, Section 1, Article 6(1)(b)(x)	Partitions are not strong enough to withstand the weight of animals		X	
2.		Using loading or unloading ramps that have slippery surfaces, that lack lateral protections or that are too steep			X
3.		Using lifting platforms or upper floors that do not have safety barriers preventing animals from falling or escaping during loading and unloading operations			X
4.		Means of transport not approved for long journeys, or not approved for the type of animals being transported.			X
5.		Transporting without valid required documentation, journey log or transporter authorisation or certificate of competence			X

(12) Groups of infringements against laws applicable to contractual obligations

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Annex 31, Part A, Section 1, Article 6(1)(b)(xii)	Violation of the law applicable to contractual obligations		X	

PUBLIC

(13) Groups of infringements against Section 2 of Part A of Annex 31 to the Trade and Cooperation Agreement

	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS		
			MSI	VSI	SI
1.	Article 6(1), point (a)	Incomplete information on the posting declaration			X
2.		Failure to submit a posting declaration to the country[1] to which the driver is posted no later than at the commencement of the posting		X	
3.	Article 6(1), point (b)	Falsified posting declaration for drivers		X	
4.		Impossibility of the driver to present a valid posting declaration		X	
5.		Failure to put at the disposal of the driver a valid posting declaration		X	
6.	Article 6(1), second subparagraph	Failure to submit the requested documents to the host country[1] within eight weeks from the date of the request. Article 6(1) point (c) specifies the types of document that must be provided		X	
7.	Article 6(4)	Failure of the operator to keep the posting declarations up to date in the public interface connected to IMI			X

Degrees of seriousness of serious infringements

(1) The degrees of seriousness of infringements shall be serious ("SI"), very serious ("VSI") and most serious ("MSI").

[1] Country refers to a Member State of the European Union for the European Union, and to the territory of Gibraltar for the United Kingdom of Great Britain and Northern Ireland.

PUBLIC

(2) Serious and very serious infringements, when committed repeatedly by the same operator, shall be regarded as more serious by the competent authority in the Party of establishment. When calculating the frequency of occurrence of repeated infringements, the competent authorities in the Party shall take into account the following factors:

The seriousness of the infringements (SI or VSI);

– Time (at least one rolling year from the date of a control);

– Number of vehicles used for the transport activities managed by the transport manager (average per year).

(3) Taking into account the potential of creating a risk to road safety, the maximum frequency of serious infringements beyond which they should be considered as more serious shall be established as follows:

– 3 SI per vehicle and per year = 1 VSI;

– 3 VSI per vehicle and per year = launch of a national procedure on good repute.

(4) The number of infringements per vehicle per year is an average figure calculated by dividing the total number of all infringements of the same level of seriousness (SI or VSI) by the average number of vehicles used during the year. The frequency formula provides for a maximum threshold for occurrence of serious infringements beyond which they shall be considered more serious. Competent authorities in the Parties may establish stricter thresholds if envisaged in their national administrative procedure for assessing good repute.

PUBLIC

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PART I

LIST OF SUBJECTS
REFERRED TO IN ARTICLE 8 OF PART A OF ANNEX X

The knowledge to be taken into consideration for the official recognition of professional competence by the Parties must cover at least the subjects listed below. In relation to those subjects, applicant road haulage operators must have the levels of knowledge and practical aptitude necessary for the management of a transport undertaking.

The minimum level of knowledge, as indicated below, must correspond at least to the level of knowledge acquired during the course of compulsory education, which is supplemented either by vocational training and supplementary technical training or by secondary school or other technical training.

A. Civil law

The applicant must, in particular:

(a) be familiar with the main types of contract used in road transport and with the rights and obligations arising therefrom;

(b) be capable of negotiating a legally valid transport contract, notably with regard to conditions of carriage;

(c) be able to consider a claim by the applicant's principal regarding compensation for loss of or damage to goods during transportation or for their late delivery, and to understand how such a claim affects the applicant's contractual liability; and

(d) be familiar with the rules and obligations arising from the CMR Convention on the Contract for the International Carriage of Goods by Road, done in Geneva on 19 May 1956.

B. Commercial law

The applicant must, in particular:

(a) be familiar with the conditions and formalities laid down for plying the trade, the general obligations incumbent upon transport operators (registration, record keeping, etc.) and the consequences of bankruptcy; and

(b) have appropriate knowledge of the various forms of commercial companies and the rules governing their constitution and operation.

C. Social law

The applicant must, in particular, be familiar with the following:

(a) the role and function of the various social institutions which are concerned with road transport (trade unions, works councils, shop stewards, labour inspectors, etc.);

PUBLIC

(b) the employers' social security obligations;

(c) the rules governing work contracts for the various categories of worker employed by road transport undertakings (form of the contracts, obligations of the parties, working conditions and working hours, paid leave, remuneration, breach of contract, etc.);

(d) the rules applicable to driving time, rest periods and working time, and the practical measures for applying those provisions; and

(e) the rules applicable to the initial qualification and continuous training of drivers laid down in Section 1 of Part B of this Annex.

D. Fiscal law

The applicant must, in particular, be familiar with the rules governing:

(a) value added tax (VAT) on transport services;

(b) motor-vehicle tax;

(c) the taxes on certain road haulage vehicles and tolls and infrastructure user charges; and

(d) income tax.

PUBLIC

E. Business and financial management

The applicant must, in particular:

(a) be familiar with the laws and practices regarding the use of cheques, bills of exchange, promissory notes, credit cards and other means or methods of payment;

(b) be familiar with the various forms of credit (bank credit, documentary credit, guarantee deposits, mortgages, leasing, renting, factoring, etc.) and the charges and obligations arising therefrom;

(c) know what a balance sheet is, how it is set out and how to interpret it;

(d) be able to read and interpret a profit and loss account;

(e) be able to assess the undertaking's profitability and financial position, in particular on the basis of financial ratios;

(f) be able to prepare a budget;

(g) be familiar with the cost elements of the undertaking (fixed costs, variable costs, working capital, depreciation, etc.), and be able to calculate costs per vehicle, per kilometre, per journey or per tonne;

(h) be able to draw up an organisation chart relating to the undertaking's personnel as a whole and to organise work plans, etc.;

PUBLIC

(i) be familiar with the principles of marketing, publicity and public relations, including transport services, sales promotion and the preparation of customer files, etc.;

(j) be familiar with the different types of insurance relating to road transport (liability, accidental injury/life insurance, non-life and luggage insurance) and the guarantees and obligations arising therefrom;

(k) be familiar with the applications of electronic data transmission in road transport;

(l) be able to apply the rules governing the invoicing of road haulage services and know the meaning and implications of Incoterms; and

(m) be familiar with the different categories of transport auxiliaries, their role, their functions and, where appropriate, their status.

F. Access to the market

The applicant must, in particular, be familiar with the following:

(a) the occupational regulations governing road transport, industrial vehicle rental and subcontracting, and in particular the rules governing the official organisation of the occupation, admission to the occupation, authorisations for road transport operations, inspections and penalties;

(b) the rules for setting up a road transport undertaking;

PUBLIC

(c) the various documents required for operating road transport services and the introduction of checking procedures to ensure that the approved documents relating to each transport operation, and in particular those relating to the vehicle, the driver, the goods and luggage are kept both in the vehicle and on the premises of the undertaking;

(d) the rules on the organisation of the market in road haulage services, as well as the rules on freight handling and logistics; and

(e) border formalities, the role and scope of T documents and TIR carnets, and the obligations and responsibilities arising from their use.

G. Technical standards and technical aspects of operation

The applicant must, in particular:

(a) be familiar with the rules concerning the weights and dimensions of vehicles in the Parties and the procedures to be followed in the case of abnormal loads which constitute an exception to these rules;

(b) be able to choose vehicles and their components (chassis, engine, transmission system, braking system, etc.) in accordance with the needs of the undertaking;

(c) be familiar with the formalities relating to the type approval, registration and technical inspection of these vehicles;

PUBLIC

(d) understand what measures must be taken to reduce noise and to combat air pollution by motor vehicle exhaust emissions;

(e) be able to draw up periodic maintenance plans for the vehicles and their equipment;

(f) be familiar with the different types of cargo-handling and loading devices (tailboards, containers, pallets, etc.) and be able to introduce procedures and issue instructions for loading and unloading goods (load distribution, stacking, stowing, blocking and chocking, etc.);

(g) be familiar with the various techniques of "piggy-back" and roll-on roll-off combined transport;

(h) be able to implement procedures to comply with the rules on the carriage of dangerous goods and waste;

(i) be able to implement procedures to comply with the rules on the carriage of perishable foodstuffs, notably those arising from the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be used for such Carriage (ATP); and

(j) be able to implement procedures to comply with the rules on the transport of live animals.

PUBLIC

H. Road safety

The applicant must, in particular:

(a) know what qualifications are required for drivers (driving licence, medical certificates, certificates of fitness, etc.);

(b) be able to take the necessary steps to ensure that drivers comply with the traffic rules, prohibitions and restrictions in force in the Parties (speed limits, priorities, waiting and parking restrictions, use of lights, road signs, etc.);

(c) be able to draw up instructions for drivers to check their compliance with the safety requirements concerning the condition of the vehicles, their equipment and cargo, and concerning preventive measures to be taken;

(d) be able to lay down procedures to be followed in the event of an accident and to implement appropriate procedures to prevent the recurrence of accidents or serious traffic offences; and

(e) be able to implement procedures to properly secure goods and be familiar with the corresponding techniques.

PUBLIC

PART II

ORGANISATION OF THE EXAMINATION

1. The Parties will organise a compulsory written examination which they may supplement by an optional oral examination to establish whether applicant road haulage operators have achieved the required level of knowledge in the subjects listed in Part I and in particular their capacity to use the instruments and techniques relating to those subjects and to fulfil the corresponding executive and coordination duties.

   (a) The compulsory written examination will involve two tests, namely:

      (i) written questions consisting of either multiple choice questions (each with four possible answers), questions requiring direct answers or a combination of both systems; and

      (ii) written exercises/case studies.

      The minimum duration of each test will be two hours.

   (b) Where an oral examination is organised, the Parties may stipulate that participation is subject to the successful completion of the written examination.

PUBLIC

2. Where the Parties also organise an oral examination, they must provide, in respect of each of the three tests, for a weighting of marks of a minimum of 25 % and a maximum of 40 % of the total number of marks to be given. Where the Parties organise only a written examination, they must provide, in respect of each test, for a weighting of marks of a minimum of 40 % and a maximum of 60 % of the total number of marks to be given.

3. With regard to all the tests, applicants must obtain an average of at least 60 % of the total number of marks to be given, achieving in any given test not less than 50 % of the total number of marks possible. In one test only, a Party may reduce that mark from 50 % to 40 %.

PUBLIC

PUBLIC

PART A

LICENCE MODEL FOR THE UNION

EUROPEAN COMMUNITY

(a)

(Colour Pantone light blue 290, or as close as possible to this colour,
format DIN A4 cellulose paper 100 g/m^2 or more)

(First page of the licence)

(Text in (one of) the official language(s) of the Member State issuing the licence)

Distinguishing sign of the Member State[1] issuing the licence	Name of the competent authority or body

PUBLIC

LICENCE No …
or
CERTIFIED TRUE COPY No ...
for the international carriage of goods by road for hire or reward

This licence entitles[2] ……
……
……
to engage in the international carriage of goods by road for hire or reward by any route, for journeys or parts of journeys carried out for hire or reward within the territory of the Community, as laid down in Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 (OJ EU L 300, 14.11.2009, p. 72) on common rules for access to the international road haulage market and in accordance with the general provisions of this licence.

Particular remarks:	
.....	
This licence is valid from	to .....
Issued in .....,	on .....
.....[3]	

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(1) The distinguishing signs of the Member States are: (B) Belgium, (BG) Bulgaria, (CZ) Czech Republic, (DK) Denmark, (D) Germany, (EST) Estonia, (IRL) Ireland, (GR) Greece, (E) Spain, (F) France, (HR) Croatia, (I) Italy, (CY) Cyprus, (LV) Latvia, (LT) Lithuania, (L) Luxembourg, (H) Hungary, (MT) Malta, (NL) Netherlands, (A) Austria, (PL) Poland, (P) Portugal, (RO) Romania, (SLO) Slovenia, (SK) Slovakia, (FIN) Finland, (S) Sweden.

(2) Name or business name and full address of the haulier.

(3) Signature and seal of the issuing competent authority or body.

(b)

(Second page of the licence)

(Text in (one of) the official language(s) of the Member State issuing the licence)

GENERAL PROVISIONS

This licence is issued under Regulation (EC) No 1072/2009.

It entitles the holder to engage in the international carriage of goods by road for hire or reward by any route for journeys or parts of journeys carried out within the territory of the Community and, where appropriate, subject to the conditions laid down herein:

— where the point of departure and the point of arrival are situated in two different Member States, with or without transit through one or more Member States or third countries,
— from a Member State to a third country or vice versa, with or without transit through one or more Member States or third countries,
— between third countries with transit through the territory of one or more Member States, and unladen journeys in connection with such carriage.

In the case of carriage from a Member State to a third country or vice versa, this licence is valid for that part of the journey carried out within the territory of the Community. It shall be valid in the Member State of loading or unloading only after the conclusion of the necessary agreement between the Community and the third country in question in accordance with Regulation (EC) No 1072/2009.

The licence is personal to the holder and is non-transferable.

It may be withdrawn by the competent authority of the Member State which issued it, notably where the holder has:

— not complied with all the conditions for using the licence,
— supplied incorrect information with regard to the data needed for the issue or extension of the licence.

The original of the licence must be kept by the haulage undertaking.

A certified copy of the licence must be kept in the vehicle[(1)]. In the case of a coupled combination of vehicles it must accompany the motor vehicle. It covers the coupled combination of vehicles even if the trailer or semi-trailer is not registered or authorised to use the roads in the name of the licence holder or if it is registered or authorised to use the roads in another State.

The licence must be presented at the request of any authorised inspecting officer.

Within the territory of each Member State, the holder must comply with the laws, regulations and administrative provisions in force in that State, in particular with regard to transport and traffic.

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(1) "Vehicle" means a motor vehicle registered in a Member State, or a coupled combination of vehicles the motor vehicle of which at least is registered in a Member State, used exclusively for the carriage of goods.

PART B

LICENCE MODEL FOR THE UNITED KINGDOM, IN RESPECT OF GIBRALTAR

United Kingdom, in respect of Gibraltar, Licence for the Community

(a)

(Colour Pantone light blue, format DIN A4 cellulose paper 100 g/m^2 or more)

(First page of the licence)

(Text in English or Welsh)

UK		NAME OF THE UNITED KINGDOM, IN RESPECT OF GIBRALTAR, COMPETENT AUTHORITY (1)

LICENCE No:

Or

CERTIFIED TRUE COPY No:

for the international carriage of goods by road for hire or reward

This licence entitles(2) _____

_____

_____

to engage in the international carriage of goods by road for hire or reward by any route, for journeys or parts of journeys carried out for hire or reward within the territory of a Member State as laid down in Regulation (EC) No 1072/2009(3).

Particular remarks: ……	
……	
This licence is valid from ……	to ……
Issued in ……	on ……

(1) Competent authority for the relevant region for which the certificate is issued.

(2) Name or business name and full address of the haulier.

(3) Regulation (EC) No 1072/2009 as retained in UK law by Section 3 of the European Union (Withdrawal) Act 2018 and as amended by regulations made under Section 8 of that Act.

(b)

(Second page of the licence)

(Text in English or Welsh)

GENERAL PROVISIONS

PUBLIC

This licence is issued under Regulation (EC) No 1072/2009[1].

It entitles the holder to engage in the international carriage of goods by road for hire or reward by any route for journeys or parts of journeys carried out within the territory of a Member State permitted by any international agreement between the United Kingdom, in respect of Gibraltar, and the European Union or a Member State.

The licence is personal to the holder and is non-transferable.

It may be withdrawn by the Driver and Vehicles Licensing Department (Gibraltar Government Ministry for Transport, Traffic and Technical Service), for example, where the holder has:

— not complied with all the conditions for using the licence,

— supplied incorrect information with regard to the data needed for the issue or extension of the licence.

The original of the licence must be kept by the haulage undertaking.

A certified copy of the licence must be kept in the vehicle[2]. In the case of a coupled combination of vehicles it must accompany the motor vehicle. It covers the coupled combination of vehicles even if the trailer or semi-trailer is not registered or authorised to use the roads in the name of the licence holder or if it is registered or authorised to use the roads in another State.

The licence must be presented at the request of any authorised inspecting officer.

Within the territory of Gibraltar or each Member State, the holder must comply with the laws, regulations and administrative provisions in force in that State, in particular with regard to transport and traffic.

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(1) Regulation (EC) No 1072/2009 as retained in UK law by Section 3 of the European Union (Withdrawal) Act 2018 and as amended by regulations made under Section 8 of that Act.

(2) "Vehicle" means a motor vehicle registered in Gibraltar, or a Member State, or a coupled combination of motor vehicles the motor vehicle of which at least is registered in Gibraltar or a Member State, used exclusively for the carriage of goods.

PUBLIC

SECURITY FEATURES OF THE LICENCE

The licence must have at least two of the following security features:

– a hologram;

– special fibres in the paper which become visible under UV-light;

– at least one microprint line (printing visible only with a magnifying glass and not reproduced by photocopying machines);

– tactile characters, symbols or patterns;

– double numbering: serial number of the licence, of the certified copy thereof as well as, in each case, the issue number;

– a security design background with fine guilloche patterns and rainbow printing.

PUBLIC

Part 1

Data contained in the national electronic registers of road transport undertakings and conditions of access to this data

1. The national electronic registers referred to in Article 13(1) of Section 1 of Part A of Annex 31 to the Trade and Cooperation Agreement shall contain at least the following data:

   (a) the name and legal form of the road transport undertaking;

   (b) the address of its establishment;

   (c) the names of the transport managers designated as meeting the requirements laid down in Article 3 of Section 1 of Part A of Annex 31 to the Trade and Cooperation Agreement relating to good repute and professional competence or, as appropriate, the name of a legal representative;

   (d) the type of authorisation, the number of vehicles it covers and, where appropriate, the serial number of the licence referred to in Article 463(1) of the Trade and Cooperation Agreement and of the certified true copies;

   (e) the number, category and type of serious infringements, as referred to in Article 6(2) of Section 1 of Part A of Annex 31 to the TCA, which have resulted in a conviction or penalty during the last 2 years;

(f) the name of any person declared to be unfit to manage the transport activities of an undertaking, as long as the good repute of that person has not been re-established pursuant to Article 6(4) of Section 1 of Part A of Annex 31 to the Trade and Cooperation Agreement, and the rehabilitation measures applicable;

(g) the registration numbers of the vehicles at the disposal of the undertakings pursuant to Article 5(f) of Section 1 of Part A of Annex 31 to the Trade and Cooperation Agreement; and

(h) the risk rating band of the undertaking pursuant to the law and/or procedures applicable in each Party.

2. The data referred to in points (a) to (d) of paragraph 1 shall be publicly accessible, in accordance with the relevant provisions of the law on personal data protection applicable in each Party.

The competent authorities in each Party may choose to keep the data referred to in points (e) to (h) of paragraph 1 in separate registers. In such cases, the data referred to in points (e) and (f) of paragraph 1 shall be made available upon request or shall be directly accessible to all the competent authorities of the Party in question. The requested information shall be provided within five working days of receipt of the request.

The data referred to in points (g) and (h) of paragraph 1 shall be made available to the competent authorities during roadside checks.

PUBLIC

The data referred to in points (e) to (h) of paragraph 1 shall only be accessible to authorities other than the competent authorities where those authorities are duly endowed with powers relating to supervision and the imposition of penalties in the road transport sector and their officials are sworn to secrecy or are otherwise under a formal obligation of secrecy.

3. Data concerning an undertaking whose authorisation has been suspended or withdrawn shall remain in the national electronic register for 2 years from the expiry of the suspension or the withdrawal of the licence and shall thereafter be immediately removed.

Data concerning any person declared to be unfit for the occupation of road haulage operator shall remain in the national electronic register as long as the good repute of that person has not been re-established pursuant to Article 6(4) of Section 1 of Part A of Annex 31 to the Trade and Cooperation Agreement. Where such a rehabilitation measure or any other measure having an equivalent effect is taken, the data shall be immediately removed.

The data referred to in the first and second subparagraphs shall specify the reasons for the suspension or withdrawal of the authorisation or the declaration of unfitness, as appropriate, and the corresponding duration.

4. The Parties shall take all necessary measures to ensure that all data contained in the national electronic register are kept up to date and are accurate

PUBLIC

Part 2

Minimum requirements for the data to be entered
in the national electronic register of road transport undertakings

1. The minimum requirements for the data to be entered in the national electronic registers established by competent authorities in each Party in accordance with Article 13 of Section 1 of Part A of Annex 31 to the Trade and Cooperation Agreement shall be as set out in the Annex to the Commission Decision 2009/992/EU[1] and in Article 1 of Commission Implementing Decision (EU) 2024/2164[2], as adapted by the following paragraphs.

2. For the purpose of this Decision, the following adaptations to the Annex to Decision 2009/992/EU apply:

   (a) The reference to "Member State" is replaced by "Country"[3].

   (b) The references to "Community licence", wherever they occur, are replaced by "licence referred to in Article 463(1) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part".

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1 Commission Decision 2009/992/EU of 17 December 2009 on minimum requirements for the data to be entered in the national electronic register of road transport undertakings (notified under document C(2009) 9959) (OJ EU L 339, 22.12.2009, p. 36, ELI: http://data.europa.eu/eli/dec/2009/992/oj)

2 Commission Implementing Decision (EU) 2024/2164 of 11 July 2024 on minimum requirements concerning the data of hired vehicles to be entered in national electronic registers of road transport undertakings (notified under document C(2024) 4665) (OJ EU L, 2024/2164, 20.8.2024, ELI: http://data.europa.eu/eli/dec_impl/2024/2164/oj).

3 Country refers to a Member State of the European Union for the European Union, and to the territory of Gibraltar for the United Kingdom of Great Britain and Northern Ireland.

(c) In the case of the United Kingdom, in respect of Gibraltar, the following fields are not required: "Number of people employed", and "Risk rating".

(d) For "Article 16(2), point (c), of Regulation (EC) No 1071/2009" substitute "point (c) of Part 1 of Appendix X-A-1-5 of Annex X of the EU-UK Agreement on Gibraltar".

3. For the purpose of this Decision, the data item "Country of Registration of the Vehicle" referred to in Article 1 of Commission Implementing Decision (EU) 2024/2164 shall, in the case of the United Kingdom, be set by default to "UK".

PUBLIC

Part 3

Modalities of the exchange of information referred to

1. The United Kingdom, in respect of Gibraltar, and the Member States of the Union shall use the European Registers of Road Transport Undertakings (ERRU), established by Regulation (EU) 2016/480, for the exchange of information referred to in paragraphs 3 and 4 of Article 14 of Section 1 of Part A of Annex 31 to the Trade and Cooperation Agreement.

2. The United Kingdom, in respect of Gibraltar, shall carry out the interconnection of its national electronic register to ERRU in accordance with the procedures and technical requirements laid down in Regulation (EU) 2016/480 as adapted by Article 5 of this Decision.

3. Each Party shall ensure that the processing of personal data in the context of this Decision is carried out solely for the purpose of verifying compliance with Title I of Heading Three of the Trade and Cooperation Agreement and with Annex 31 to the Trade and Cooperation Agreement.

4. The United Kingdom, in respect of Gibraltar, and each Member State of the Union shall designate an ERRU contact point responsible for the exchange of information of the other Party with regard to the application of this Decision.

PUBLIC

Part 4

Adaptations to the technical specifications of ERRU

For the purpose of this Decision, the following adaptations to Regulation (EU) 2016/480 apply:

1. References to "Member State", wherever they occur, shall be understood as references to "Country"[1] and references to "Member States", wherever they occur, shall be understood as references to "Countries"[2].

2. References to "this Regulation", wherever they occur, "Annexes I to VII to this Regulation" and "Annex VIII to this Regulation" shall be understood as references to "Appendix X-A-1-5 of [name of the EU UK Gibraltar Agreement]".

[1] Country refers to a Member State of the European Union or, for the United Kingdom in respect of Gibraltar, to the territory of Gibraltar.

[2] Countries refers to both the Member States of the European Union and, for the United Kingdom in respect of Gibraltar, to the territory of Gibraltar.

3. The references to "Community licence", wherever they occur, shall be understood as references to "licence referred to in Article 463(1) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part".

4. In Articles 1 to 3 for "Article 16 of Regulation (EC) No 1071/2009" and "Article 16(5) of Regulation (EC) No 1071/2009", substitute "Appendix X-A-1-5 of [name of the EU UK Gibraltar Agreement]".

5. In Article 2, for "Article 2 of Regulation (EC) No 1071/2009" substitute "Article 2 of Section 1 of Part A of Annex 31 to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part".

6. In Article 2, point (e), for "Article 8(8) of Regulation (EC) No 1071/2009" substitute "Article 465(1) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part".

7. Articles 6 and 7 shall not be applicable for the purpose of this Decision.

8. In point 1.3 of Annex II,

   (a) For "risk rating and risk rating band" substitute "risk rating band".

   (b) The reference to "number of employees" shall be removed.

PUBLIC

9. In the Appendix to Annex III,

(a) The following fields shall not be contained in a Check Transport Undertaking Data Response message: "Number of People Employed", "Risk Rating";

(b) For "Annex IV to Regulation (EC) No 1071/2009 and Annex I to Commission Regulation No (EU) 2016/403", substitute "Appendix 31-A-1-1 of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part and the Annex to Decision No 1/2025 of the Specialised Committee on Road Transport established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part"

10. In Section 1 of Annex VIII, for "Article 11(4) of Regulation (EC) No 1071/2009", substitute "Article 12(2) of Section 1 of Part A of Annex 31 to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part".

PUBLIC

11. In Section 2.1 of Annex VIII, for "Directive 2006/22/EC or in Regulation (EC) No 1071/2009" substitute "Appendix 31-A-1-1 of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part and the Annex to Decision No 1/2025 of the Specialised Committee on Road Transport established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part[*+]

Part 5

Suspension of the United Kingdom, in respect of Gibraltar, connection to ERRU

The Union may suspend the access of the United Kingdom, in respect of Gibraltar, to ERRU if the United Kingdom, in respect of Gibraltar, ceases to meet the conditions set out in this Appendix.

[+] OJ: Please insert the number for the Decision contained in document ST 12667/25 ADD1 and complete the corresponding footnote.

PART B

REQUIREMENTS FOR DRIVERS INVOLVED IN THE TRANSPORT OF GOODS IN ACCORDANCE WITH ARTICLE 280 OF THIS AGREEMENT

PUBLIC

SECTION 1

CERTIFICATE OF PROFESSIONAL COMPETENCE

ARTICLE 1

Scope

This Section applies to the activity of driving by anyone employed or used by a road haulage operator of a Party undertaking journeys referred to in Articles 276 or 277 of this Agreement and using vehicles for which a driving licence of category C1, C1+E, C or C+E, or a driving licence recognised as equivalent by the Specialised Committee on Economy and Trade is required.

ARTICLE 2

Exemptions

PUBLIC

A certificate of professional competence (CPC) is not required for drivers of vehicles:

(a) with a maximum authorised speed not exceeding 45 km/h;

(b) used by, or under the control of, the armed forces, civil defence, the fire service, forces responsible for maintaining public order, and emergency ambulance services, when the carriage is undertaken as a consequence of the tasks assigned to those services;

(c) undergoing road tests for technical development, repair or maintenance purposes, or the drivers of new or rebuilt vehicles which have not yet been put into service;

(d) used in states of emergency or assigned to rescue missions;

(e) carrying material, equipment or machinery to be used by the drivers in the course of their work, provided that driving the vehicles is not the drivers' principal activity; or

(f) used, or hired without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity, except if driving is part of the driver's principal activity or the driving exceeds a distance set in national law from the base of the undertaking which owns, hires or leases the vehicle.

ARTICLE 3

Qualification and training

1. The activity of driving as defined in Article 1 shall be subject to a compulsory initial qualification and to compulsory periodic training. To that end the Parties shall provide for:

(a) a system of initial qualification corresponding to one of the following two options:

(i) option combining both course attendance and a test

In accordance with Section 2(2.1) of Appendix X-B-1-1, this type of initial qualification involves compulsory course attendance for a specific period. It shall conclude with a test. Upon successful completion of the test, the qualification shall be certified by a CPC as provided for in point (a) of Article 6(1);

(ii) option involving only tests

In accordance with Section 2(2.2) of Appendix X-B-1-1, this type of initial qualification does not involve compulsory course attendance but only theoretical and practical tests. Upon successful completion of the tests, the qualification shall be certified by a CPC as provided for in point (b) of Article 6(1).

However, a Party may authorise a driver to drive within its territory before obtaining a CPC, where the driver is undergoing a national vocational training course of at least six months, for a maximum period of three years. In the context of that vocational training course, the tests referred to in points (i) and (ii) of this point may be completed in stages;

PUBLIC

(b) a system of periodic training

In accordance with Section 4 of Appendix X-B-1-1, periodic training involves compulsory course attendance. It shall be certified by a CPC as provided for in Article 8(1).

2. A Party may also provide for a system of accelerated initial qualification so that a driver may drive in the cases referred to in points (a)(ii) and (b) of Article 5(2).

In accordance with Section 3 of Appendix X-B-1-1, the accelerated initial qualification shall involve compulsory course attendance. It shall conclude with a test. Upon successful completion of the test, the qualification shall be certified by a CPC as provided for in Article 6(2).

3. A Party may exempt drivers who have obtained the certificate of professional competence provided for in Part A from the tests referred to in points (a)(i) and (ii) of paragraph 1 and in paragraph 2 of this Article in the subjects covered by the test provided for in that part of this Annex and, where appropriate, from attending the part of the course corresponding thereto.

ARTICLE 4

Acquired rights

Drivers who hold a category C1, C1+E, C or C+E licence, or a licence recognised as equivalent by the Specialised Committee on Economy and Trade, issued no later than 10 September 2009, shall be exempted from the need to obtain an initial qualification.

PUBLIC

ARTICLE 5

Initial qualification

PUBLIC

1. Access to an initial qualification shall not require the corresponding driving licence to be obtained beforehand.

2. Drivers of a vehicle intended for the carriage of goods may drive:

(a) from the age of 18:

(i) a vehicle in licence categories C and C+E, provided they hold a CPC as referred to in Article 6(1); and

(ii) a vehicle in licence categories C1 and C1+E, provided they hold a CPC as referred to in Article 6(2);

(b) from the age of 21, a vehicle in licence categories C and C+E, provided they hold a CPC as referred to in Article 6(2).

3. Without prejudice to the age limits specified in paragraph 2, drivers undertaking carriage of goods who hold a CPC as provided for in Article 6 for one of the categories provided for in paragraph 2 of this Article shall be exempted from obtaining such a CPC for any other of the categories of vehicles referred to in that paragraph.

4. Drivers undertaking carriage of goods who broaden or modify their activities in order to carry passengers, or vice versa, and who hold a CPC as provided for in Article 6, shall not be required to repeat the common parts of the initial qualification, but rather only the parts specific to the new qualification.

PUBLIC

ARTICLE 6

CPC certifying the initial qualification

1. CPC certifying an initial qualification

(a) CPC awarded on the basis of course attendance and a test

In accordance with point (a)(i) of Article 3(1), the Parties shall require trainee drivers to attend courses in a training centre approved by the competent authorities in accordance with Section 5 of Appendix X-B-1-1, hereinafter referred to as "approved training centre". Those courses shall cover all the subjects referred to in Section 1 of Appendix X-B-1-1.

That training shall conclude with successful completion of the test provided for in Section 2(2.1) of Appendix X-B-1-1. That test shall be organised by the competent authorities in the Parties or an entity designated by them and shall serve to check whether, for the aforementioned subjects, the trainee driver has the level of knowledge required in Section 1 of Appendix X-B-1-1. The said authorities or entities shall supervise the test and, upon successful completion, issue the drivers with a CPC certifying an initial qualification.

(b) CPC awarded on the basis of tests

In accordance with point (a)(ii) of Article 3(1), the Parties shall require trainee drivers to pass the theoretical and practical tests referred to in Section 2(2.2) of Appendix X-B-1-1. Those tests shall be organised by the competent authorities in the Parties or an entity designated by them and shall serve to check whether, for all the aforementioned subjects, the trainee driver has the level of knowledge required in Section 1 of Appendix X-B-1-1. The said authorities or entities shall supervise the tests and, upon successful completion, issue the drivers with a CPC certifying an initial qualification.

2. CPC certifying an accelerated initial qualification

In accordance with Article 3(2), the Parties shall require trainee drivers to attend courses in an approved training centre. Those courses shall cover all the subjects referred to in Section 1 of Appendix X-B-1-1.

That training shall conclude with the test provided for in Section 3 of Appendix X-B-1-1. That test shall be organised by the competent authorities in the Parties or an entity designated by them and shall serve to check whether, for the aforementioned subjects, the trainee driver has the level of knowledge required in Section 1 of Appendix X-B-1-1. The said authorities or entities shall supervise the test and, upon successful completion, issue the drivers with a CPC certifying an accelerated initial qualification.

PUBLIC

ARTICLE 7

Periodic training

Periodic training shall consist of training to enable holders of a CPC to update the knowledge which is essential for their work, with specific emphasis on road safety, health and safety at work, and the reduction of the environmental impact of driving.

That training shall be organised by an approved training centre, in accordance with Section 5 of Appendix X-B-1-1. Training shall consist of classroom teaching, practical training and, if available, training by means of information and communication technology (ICT) tools or on top-of-the-range simulators. If a driver moves to another undertaking, the periodic training already undergone must be taken into account.

Periodic training shall be designed to expand on, and to revise, some of the subjects referred in Section 1 of Appendix X-B-1-1. It shall cover a variety of subjects and shall always include at least one road safety related subject. The training subjects shall take into account developments in the relevant legislation and technology, and shall, as far as possible, take into account the specific training needs of the driver.

PUBLIC

ARTICLE 8

CPC certifying periodic training

1. When a driver has completed the periodic training referred to in Article 7, the competent authorities in the Parties or the approved training centre shall issue him or her with a CPC certifying periodic training.

2. The following drivers shall undergo a first course of periodic training:

(a) holders of a CPC as referred to in Article 6, within five years of the issue of that CPC; and

(b) the drivers referred to in Article 4, within five years of 10 September 2009.

A Party may reduce or extend the periods of time referred to in point (a) or (b) by a maximum of two years.

3. A driver who has completed a first course of periodic training as referred to in paragraph 2 of this Article shall undergo periodic training every five years, before the end of the period of validity of the CPC certifying periodic training.

4. Holders of the CPC as referred to in Article 6 or the CPC as referred to in paragraph 1 of this Article and the drivers referred to in Article 4 who have ceased pursuit of the occupation and do not meet the requirements of paragraphs 1, 2 and 3 of this Article, shall undergo a course of periodic training before resuming pursuit of the occupation.

PUBLIC

5. Drivers undertaking the carriage of goods by road who have completed courses of periodic training for one of the licence categories provided for in Article 5(2) shall be exempt from the obligation to undergo further periodic training for another of the categories provided for in that paragraph.

PUBLIC

ARTICLE 9

Enforcement

The competent authorities in a Party shall either affix directly on the driver's driving permit (licence), beside the corresponding categories of licence, a distinguishing sign attesting to the possession of a CPC and indicating the date of expiry, or introduce a special driver qualification card which should be drawn up in accordance with the model reproduced in Appendix X-B-1-2. Any other model may be acceptable provided that it is recognised as equivalent by the Specialised Committee on Economy and Trade. The driver qualification card or any equivalent document as specified above issued by the competent authorities in a Party shall be recognised by the other Party for the purposes of this Section.

Drivers must be able to present, at the request of any authorised inspecting officer, a driving permit (licence) or a specific driver qualification card or equivalent document bearing the distinguishing sign confirming possession of a CPC.

PUBLIC

To ensure that the rules governing the transport of goods by road covered by Articles 276 and 277 of this Agreement are as harmonised as possible, the minimum requirements for driver qualification and training as well as the approval of training centres are set out in Sections 1 to 5 of this Appendix. Any other content for this qualification or training may be acceptable provided that it is considered as equivalent by the Specialised Committee on Economy and Trade.

SECTION 1

LIST OF SUBJECTS

The knowledge to be taken into account by the Parties when establishing the driver's initial qualification and periodic training must include at least the subjects in this list. Trainee drivers must reach the level of knowledge and practical competence necessary to drive in all safety vehicles of the relevant licence category. The minimum level of knowledge may not be less than the level reached during compulsory education, supplemented by professional training.

1. Advanced training in rational driving based on safety regulations

    1.1. Objective: to know the characteristics of the transmission system in order to make the best possible use of it:

curves relating to torque, power, and specific consumption of an engine, area of optimum use of revolution counter, gearbox-ratio cover diagrams.

1.2. Objective: to know the technical characteristics and operation of the safety controls in order to control the vehicle, minimise wear and tear, and prevent disfunctioning:

limits to the use of brakes and retarder, combined use of brakes and retarder, making better use of speed and gear ratio, making use of vehicle inertia, using ways of slowing down and braking on downhill stretches, action in the event of failure, use of electronic and mechanical devices such as Electronic Stability Program (ESP), Advanced Emergency Braking Systems (AEBS), Anti-Lock Braking System (ABS), traction control systems (TCS) and in vehicle monitoring systems (IVMS) and other, approved for use, driver assistance or automation devices.

1.3. Objective: ability to optimise fuel consumption:

optimisation of fuel consumption by applying know-how as regards points 1.1 and 1.2, importance of anticipating traffic flow, appropriate distance to other vehicles and use of the vehicle's momentum, steady speed, smooth driving style and appropriate tyre pressure, and familiarity with intelligent transport systems that improve driving efficiency and assist in route planning.

PUBLIC

1.4. Objective: ability to anticipate, assess and adapt to risks in traffic:

to be aware of and adapt to different road, traffic and weather conditions, anticipate forthcoming events; to understand how to prepare and plan a journey during abnormal weather conditions; to be familiar with the use of related safety equipment and to understand when a journey has to be postponed or cancelled due to extreme weather conditions; to adapt to the risks of traffic, including dangerous behaviour in traffic or distracted driving (through the use of electronic devices, eating, drinking, etc.); to recognise and adapt to dangerous situations and to be able to cope with stress deriving therefrom, in particular related to size and weight of the vehicles and vulnerable road users, such as pedestrians, cyclists and powered two wheelers;

to identify possible hazardous situations and properly interpret how those potentially hazardous situations may turn into situations where crashes can no longer be averted and selecting and implementing actions that increase the safety margins to such an extent that a crash can still be averted in case the potential hazards should occur.

1.5. Objective: ability to load the vehicle with due regard for safety rules and proper vehicle use:

forces affecting vehicles in motion, use of gearbox ratios according to vehicle load and road profile, use of automatic transmission systems, calculation of payload of vehicle or assembly, calculation of total volume, load distribution, consequences of overloading the axle, vehicle stability and centre of gravity, types of packaging and pallets;

PUBLIC

main categories of goods needing securing, clamping and securing techniques, use of securing straps, checking of securing devices, use of handling equipment, placing and removal of tarpaulins.

2. Application of regulations

2.1. Objective: to know the social environment of road transport and the rules governing it:

maximum working periods specific to the transport industry; principles, application and consequences of the rules related to the driving times and rest periods and those related to the tachograph; penalties for failure to use, improper use of and tampering with the tachograph; knowledge of the social environment of road transport: rights and duties of drivers as regards initial qualification and periodic training.

2.2. Objective: to know the regulations governing the carriage of goods:

transport operating licences, documents to be carried in the vehicle, bans on using certain roads, road-use fees, obligations under standard contracts for the carriage of goods, drafting of documents which form the transport contract, international transport permits, obligations under the CMR Convention on the Contract for the International Carriage of Goods by Road, done in Geneva on 19 May 1956, drafting of the international consignment note, crossing borders, freight forwarders, special documents accompanying goods.

PUBLIC

3. Health, road and environmental safety, service, logistics

3.1. Objective: to make drivers aware of the risks of the road and of accidents at work:

types of accidents at work in the transport sector, road accident statistics, involvement of lorries/coaches, human, material and financial consequences.

3.2. Objective: ability to prevent criminality and trafficking in illegal immigrants:

general information, implications for drivers, preventive measures, check list, legislation on transport operator liability.

3.3. Objective: ability to prevent physical risks:

ergonomic principles; movements and postures which pose a risk, physical fitness, handling exercises, personal protection.

3.4. Objective: awareness of the importance of physical and mental ability:

principles of healthy, balanced eating, effects of alcohol, drugs or any other substance likely to affect behaviour, symptoms, causes, effects of fatigue and stress, fundamental role of the basic work/rest cycle.

PUBLIC

3.5. Objective: ability to assess emergency situations:

behaviour in an emergency situation: assessment of the situation, avoiding complications of an accident, summoning assistance, assisting casualties and giving first aid, reaction in the event of fire, evacuation of occupants of a lorry, reaction in the event of aggression; basic principles for the drafting of an accident report.

3.6. Objective: ability to adopt behaviour to help enhance the image of the company:

behaviour of the driver and company image: importance for the company of the standard of service provided by the driver, the roles of the driver, people with whom the driver will be dealing, vehicle maintenance, work organisation, commercial and financial effects of a dispute.

3.7. Objective: to know the economic environment of road haulage and the organization of the market:

road transport in relation to other modes of transport (competition, shippers), different road transport activities (transport for hire or reward, own account, auxiliary transport activities), organisation of the main types of transport company and auxiliary transport activities, different transport specialisations (road tanker, controlled temperature, dangerous goods, animal transport, etc.), changes in the industry (diversification of services provided, rail-road, subcontracting, etc.).

PUBLIC

SECTION 2

COMPULSORY INITIAL QUALIFICATION
PROVIDED FOR IN POINT (a) OF ARTICLE 3(1)
OF SECTION 1 OF PART B

A Party may count specific other training related to the transport of goods by road required under its legislation as part of the training under this Section and under Section 3 of this Appendix.

2.1. Option combining both course attendance and a test

Initial qualification must include the teaching of all subjects in the list under Section 1 of this Appendix. The duration of that initial qualification must be 280 hours.

Each trainee driver must drive for at least 20 hours individually in a vehicle of the category concerned which meets at least the requirements for test vehicles.

When driving individually, the trainee driver must be accompanied by an instructor, employed by an approved training centre. Each trainee driver may drive for a maximum of eight hours of the 20 hours of individual driving on special terrain or on a top-of-the-range simulator so as to assess training in rational driving based on safety regulations, in particular with regard to vehicle handling in different road conditions and the way they change with different atmospheric conditions, the time of day or night, and the ability to optimise fuel consumption.

PUBLIC

A Party and, in the case of the Union, a Member State may allow part of the training to be delivered by the approved training centre by means of ICT tools, such as e-learning, while ensuring that the high quality and the effectiveness of the training are maintained, and by selecting the subjects where ICT tools can most effectively be deployed. Reliable user identification and appropriate means of control shall be required in such a case.

For the drivers referred to in Article 5(4) of Section 1 of Part B the length of the initial qualification must be 70 hours, including five hours of individual driving.

At the end of that training, the competent authorities in the Parties or the entity designated by them shall give the driver a written or oral test. The test must include at least one question on each of the objectives in the list of subjects under Section 1 of this Appendix.

2.2. Option involving a test

The competent authorities in the Parties or the entity designated by them shall organise the aforementioned theoretical and practical tests to check whether the trainee driver has the level of knowledge required in Section 1 of this Appendix for the subjects and objectives listed there.

(a) The theoretical test shall consist of at least two parts:

(i) questions including multiple-choice questions, questions requiring a direct answer, or a combination of both; and

PUBLIC

(ii) case studies.

The minimum duration of the theoretical test must be four hours.

(b) The practical test shall consist of two parts:

(i) a driving test aimed at assessing training in rational driving based on safety regulations. The test must take place, whenever possible, on roads outside built-up areas, on fast roads and on motorways (or similar), and on all kinds of urban highways presenting the different types of difficulties that a driver is liable to encounter. It would be desirable for that test to take place in different traffic density conditions. The driving time on the road must be used optimally in order to assess the candidate in all traffic areas likely to be encountered. The minimum duration of that test must be 90 minutes;

(ii) a practical test covering at least points 1.5, 3.2, 3.3 and 3.5 of Section 1 of this Appendix.

The minimum duration of that test must be 30 minutes.

The vehicle used for the practical test must meet at least the requirements for test vehicles.

PUBLIC

The practical test may be supplemented by a third test taking place on special terrain or on a top-of the-range simulator so as to assess training in rational driving based on safety regulations, in particular with regard to vehicle handling in different road conditions and the way they change with different atmospheric conditions and the time of day or night.

The duration of that optional test is not fixed. Should the driver undergo such a test, its duration may be deducted from the 90 minutes of the driving test referred to under point (i), but the time deducted may not exceed 30 minutes.

For the drivers referred to in Article 5(4) of Section 1 of Part B, the theoretical test must be limited to the subjects, referred to in Section 1 of this Appendix, which are relevant to the vehicles to which the new initial qualification applies. However, such drivers must undergo the whole practical test.

SECTION 3

ACCELERATED INITIAL QUALIFICATION
PROVIDED FOR IN ARTICLE 3(2)
OF SECTION 1 OF PART B OF ANNEX X

Accelerated initial qualification must include the teaching of all subjects in the list in Section 1 of this Appendix. Its duration must be 140 hours.

Each trainee driver must drive for at least 10 hours individually in a vehicle of the category concerned which meets at least the requirements for test vehicles.

PUBLIC

When driving individually, the trainee driver must be accompanied by an instructor, employed by an approved training centre. Each trainee driver may drive for a maximum of four hours of the 10 hours of individual driving on special terrain or on a top-of-the-range simulator so as to assess training in rational driving based on safety regulations, in particular with regard to vehicle handling in different road conditions and the way those road conditions change with different atmospheric conditions, the time of day or night, and the ability to optimise fuel consumption.

The provisions of the fourth paragraph of point 2.1 of Section 2 of this Appendix shall also apply to the accelerated initial qualification.

For the drivers referred to in Article 5(4) of Section 1 of Part B, the length of the accelerated initial qualification must be 35 hours, including two-and-a-half hours of individual driving.

At the end of that training, the competent authorities in the Parties or the entity designated by them shall give the driver a written or oral test. The test must include at least one question on each of the objectives in the list of subjects under Section 1 of this Appendix.

A Party may count specific other training related to the transport of goods by road required under its legislation as part of the training under this Section.

PUBLIC

SECTION 4

COMPULSORY PERIODIC TRAINING
PROVIDED FOR IN POINT (b) OF ARTICLE 3(1)
OF SECTION 1 OF PART B OF ANNEX X

Compulsory periodic training courses must be organised by an approved training centre. Their duration must be of 35 hours every five years, given in periods of at least seven hours, which may be split over two consecutive days. Whenever e- learning is used, the approved training centre shall ensure that the proper quality of the training is maintained, including by selecting the subjects where ICT tools can most effectively be deployed. In particular, the Parties shall require reliable user identification and appropriate means of control. The maximum duration of the e-learning training shall not exceed 12 hours. At least one of the training course periods shall cover a road safety related subject. The content of the training shall take into account training needs specific to the transport operations carried out by the driver and relevant legal and technological developments and should, as far as possible, take into account specific training needs of the driver. A range of different subjects should be covered over the 35 hours, including repeat training where it is shown that the driver needs specific remedial training.

A Party and, in the case of the Union, a Member State may count specific other training related to the transport of goods by road required under its legislation as part of the training under this Section.

PUBLIC

SECTION 5

APPROVAL OF THE INITIAL QUALIFICATION AND PERIODIC TRAINING

5.1. The training centres taking part in the initial qualification and periodic training must be approved by the competent authorities in the Parties. Approval may be given only in response to a written application. The application must be accompanied by documents including:

5.1.1. a suitable qualification and training programme specifying the subjects taught and setting out the proposed implementing plan and teaching methods;

5.1.2. the instructors' qualifications and fields of activity;

5.1.3. information about the premises where the courses are given, the teaching materials, the resources made available for the practical work, and the vehicle fleet used;

5.1.4. the conditions regarding participation in the courses (number of participants).

5.2. The competent authority must give approval in writing subject to the following conditions:

5.2.1. the training must be given in accordance with the documents accompanying the application;

PUBLIC

5.2.2. the competent authority must be entitled to send authorised persons to assist in the training courses of the approved centres, and must be entitled to monitor such centres, with regard to the resources used and the proper running of the training courses and tests;

5.2.3. the approval may be withdrawn or suspended if the conditions of approval are no longer complied with.

The approved centre must guarantee that the instructors have a sound knowledge of the most recent regulations and training requirements. As part of a specific selection procedure, the instructors must provide certification showing a knowledge of both the subject material and teaching methods. As regards the practical part of the training, instructors must provide certification of experience as professional drivers or similar driving experience, such as that of driving instructors for heavy vehicles.

The programme of instruction must be in accordance with the approval and must cover the subjects in the list in Section 1.

PUBLIC

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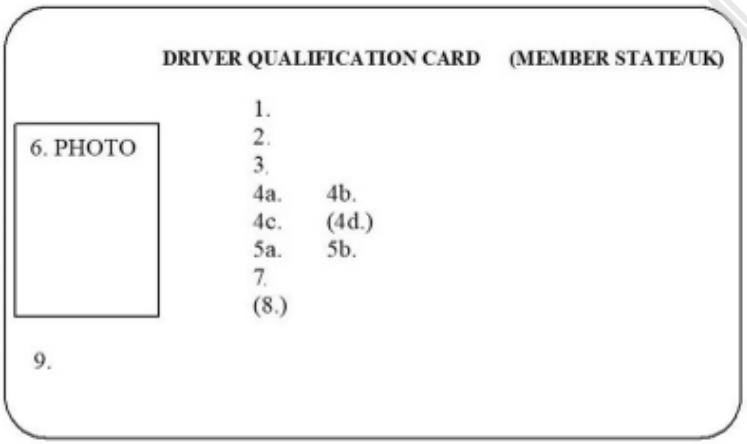
MODEL OF A DRIVER QUALIFICATION CARD
REFERRED TO IN ARTICLE 9 OF SECTION 1 OF PART B OF THIS ANNEX

Side 1



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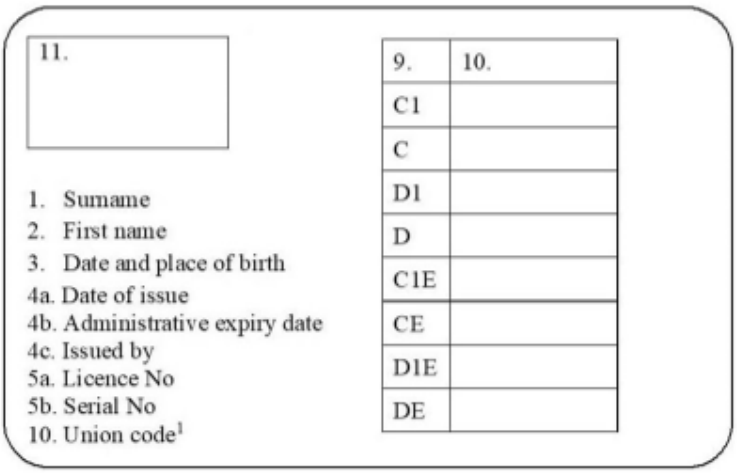

[1] If applicable

SECTION 2

DRIVING TIMES, BREAKS AND REST PERIODS

PUBLIC

ARTICLE 1

Scope

1. This Section lays down the rules on driving time, breaks and rest periods for drivers referred to in point (b) of Article 280 of this Agreement undertaking journeys referred to in Articles 276 and 277 of this Agreement.

2. Where a driver undertakes a journey referred to in Articles 276 or 277 of this Agreement, the rules in this Section apply to any road transport operation undertaken by that driver.

3. This Section applies:

(a) where the maximum permissible mass of the vehicle, including any trailer, or semitrailer, exceeds 3,5 tonnes; or

(b) from 1 July 2026, where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 2,5 tonnes.

4. This Section does not apply to transport by:

(a) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for:

(i) carrying materials, equipment or machinery for the driver's use in the course of the driver's work, or

(ii) for delivering goods which are produced on a craft basis,

only within a 100 km radius from the base of the undertaking and on the condition that driving the vehicle does not constitute the driver's main activity and transport is not carried out for hire or reward;

(b) vehicles with a maximum authorised speed not exceeding 40 km/h;

(c) vehicles owned or hired without a driver by the armed services, civil defence services, fire services, and forces responsible for maintaining public order when the transport is undertaken as a consequence of the tasks assigned to those services and is under their control;

(d) vehicles used in emergencies or rescue operations;

(e) specialised vehicles used for medical purposes;

(f) specialised breakdown vehicles operating within a 100 km radius of their base;

(g) vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service;

PUBLIC

(h) vehicles with a maximum permissible mass, including any trailer, or semi-trailer exceeding 2,5 tonnes but not exceeding 3,5 tonnes that are used for the transport of goods, where the transport is not effected for hire or reward, but on the own account of the company or the driver, and where driving does not constitute the main activity of the person driving the vehicle;

(i) commercial vehicles, which have a historic status according to the legislation of the Member State in which they are being driven and which are used for the non-commercial transport of goods.

PUBLIC

ARTICLE 2

Definitions

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

(a) "transport by road" means any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not;

(b) "break" means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation;

(c) "other work" means all activities which are defined as working time in point (a) of Article 2(1) of Section 3 of Part B except "driving", including any work for the same or another employer, within or outside of the transport sector;

(d) "rest" means any uninterrupted period during which a driver may freely dispose of his or her time;

(e) "daily rest period" means the daily period during which a driver may freely dispose of his or her time and covers a "regular daily rest period" and a "reduced daily rest period":

(i) "regular daily rest period" means any period of rest of at least 11 hours, which may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least nine hours; and

(ii) "reduced daily rest period" means any period of rest of at least nine hours but less than 11 hours;

(f) "weekly rest period" means the weekly period during which a driver may freely dispose of his or her time and covers a "regular weekly rest period" and a "reduced weekly rest period":

(i) "regular weekly rest period" means any period of rest of at least 45 hours; and

(ii) "reduced weekly rest period" means any period of rest of less than 45 hours, which may, subject to the conditions laid down in Article 6(6) and 6(7), be shortened to a minimum of 24 consecutive hours;

(g) "a week" means the period of time between 00.00 on Monday and 24.00 on Sunday;

PUBLIC

(h) "driving time" means the duration of driving activity recorded:

(i) automatically or semi-automatically by the tachograph as defined in points (e), (f), (g) and (h) of Article 2 of Section 4 of Part B of this Annex; or

(ii) manually as required by Article 9(2) and Article 11 of Section 4 of Part B of this Annex;

(i) "daily driving time" means the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period;

(j) "weekly driving time" means the total accumulated driving time during a week;

(k) "maximum permissible mass" means the maximum authorised operating mass of a vehicle when fully laden;

(l) "multi-manning" means the situation where, during each period of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, there are at least two drivers in the vehicle to do the driving for the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory;

(m) "driving period" means the accumulated driving time from when a driver commences driving following a rest period or a break until the driver takes a rest period or a break; the driving period may be continuous or broken.

PUBLIC

ARTICLE 3

Requirement for drivers' mates

The minimum age for drivers' mates shall be 18 years. However, each Party and, in the case of the Union, a Member State may reduce the minimum age for drivers' mates to 16 years, provided that the reduction is for the purposes of vocational training and there is compliance with the limits imposed by the United Kingdom, in respect of Gibraltar, for the Union, the Member State's national rules on employment matters.

PUBLIC

ARTICLE 4

Driving times

1. The daily driving time shall not exceed nine hours.

However, the daily driving time may be extended to at most 10 hours not more than twice during the week.

2. The weekly driving time shall not exceed 56 hours and shall not result in the maximum weekly working time of 60 hours being exceeded.

3. The total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.

4. Daily and weekly driving times shall include all driving time on the territory of the Parties.

5. A driver shall record as other work any time spent as described in point (c) of Article 2 of this Section as well as any time spent driving a vehicle used for commercial operations where a driver is not required to record driving time, and shall record any periods of availability, as defined in point (2) of Article 2 of Section 3 of Part B, in accordance with point (b)(iii) of Article 6(5) of Section 4 of Part B. This record shall be entered either manually on a record sheet or printout or by use of manual input facilities on recording equipment.

PUBLIC

ARTICLE 5

Breaks

After a driving period of four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes, unless the driver takes a rest period.

That break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with the provisions of the first paragraph.

A driver engaged in multi-manning may take a break of 45 minutes in a vehicle driven by another driver provided that the driver taking the break is not involved in assisting the driver driving the vehicle.

ARTICLE 6

Rests

1. A driver shall take daily and weekly rest periods.

2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver shall have taken a new daily rest period.

If the portion of the daily rest period which falls within that 24-hour period is at least nine hours but less than 11 hours, then the daily rest period in question shall be regarded as a reduced daily rest period.

3. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period.

4. A driver may have at most three reduced daily rest periods between any two weekly rest periods.

5. By way of derogation from paragraph 2, within 30 hours of the end of a daily or weekly rest period, a driver engaged in multi-manning must have taken a new daily rest period of at least nine hours.

6. In any two consecutive weeks a driver shall take at least:

(a) two regular weekly rest periods; or

PUBLIC

(b) one regular weekly rest period and one reduced weekly rest period of at least 24 hours.

A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.

7. By way of derogation from paragraph 6, a driver engaged in international transport of goods may, outside the territory of the Party of the road haulage operator or, for drivers of Union road haulage operators, outside the territory of the Member State of the road haulage operator, take two consecutive reduced weekly rest periods provided that the driver in any four consecutive weeks takes at least four weekly rest periods, of which at least two shall be regular weekly rest periods.

For the purpose of this paragraph, a driver shall be considered to be engaged in international transport where the driver starts the two consecutive reduced weekly rest periods outside the territory of the Party of the road haulage operator and drivers' place of residence or, for the Union, outside the territory of the Member State of the road haulage operator and the country of the drivers' place of residence.

Any reduction in weekly rest period shall be compensated by an equivalent period of rest taken *en bloc* before the end of the third week following the week in question.

Where two reduced weekly rest periods have been taken consecutively in accordance with the third subparagraph, the next weekly rest period shall be preceded by a rest period taken as compensation for those two reduced weekly rest periods.

PUBLIC

8. Any rest taken as compensation for a reduced weekly rest period shall be attached to another rest period of at least nine hours.

9. The regular weekly rest periods and any weekly rest period of more than 45 hours taken in compensation for previous reduced weekly rest periods shall not be taken in a vehicle. They shall be taken in suitable gender-friendly accommodation with adequate sleeping and sanitary facilities.

Any costs for accommodation outside the vehicle shall be covered by the employer.

10. Transport undertakings shall organise the work of drivers in such a way that the drivers are able to return to the employer's operational centre where the driver is normally based and where the driver's weekly rest period begins, in Gibraltar and, in the case of the Union, the Member State of the employer's establishment, or to return to the drivers' place of residence, within each period of four consecutive weeks, in order to spend at least one regular weekly rest period or a weekly rest period of more than 45 hours taken in compensation for reduced weekly rest period.

However, where the driver has taken two consecutive reduced weekly rest periods in accordance with paragraph 7, the transport undertaking shall organise the work of the driver in such a way that the driver is able to return before the start of the regular weekly rest period of more than 45 hours taken in compensation.

The undertaking shall document how it fulfils that obligation and shall keep the documentation at its premises in order to present it at the request of control authorities.

PUBLIC

11. A weekly rest period that falls in two weeks may be counted in either week, but not in both.

12. By way of derogation, where a driver accompanies a vehicle which is transported by ferry or train and takes a regular daily rest period or a reduced weekly rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest or reduced weekly rest period the driver shall have access to a sleeper cabin, bunk or couchette at their disposal.

With regard to regular weekly rest periods, that derogation shall only apply to ferry or train journeys where:

(a) the journey is scheduled for 8 hours or more; and

(b) the driver has access to a sleeper cabin in the ferry or on the train.

13. Any time spent travelling to a location to take charge of a vehicle falling within the scope of this Section, or to return from that location, when the vehicle is neither at the driver's home nor at the employer's operational centre where the driver is normally based, shall not be counted as a rest or break unless the driver is on a ferry or train and has access to a sleeper cabin, bunk or couchette.

14. Any time spent by a driver driving a vehicle which falls outside the scope of this Section to or from a vehicle which falls within the scope of this Section, which is not at the driver's home or at the employer's operational centre where the driver is normally based, shall count as other work.

PUBLIC

ARTICLE 7

Liability of road haulage operators

1. A road haulage operator of a Party shall not give drivers it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled, the speed of delivery and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Section.

2. A road haulage operator of a Party shall organise road transport operations and properly instruct crew members so that they are able to comply with the provisions of this Section.

3. A road haulage operator of a Party shall be liable for infringements committed by drivers of the operator, even if the infringement was committed on the territory of the other Party.

Without prejudice to the right of the Parties to hold road haulage operators fully liable, the Parties may make this liability conditional on the operator's infringement of paragraphs 1 and 2. The Parties may consider any evidence that the road haulage operator cannot reasonably be held responsible for the infringement committed.

4. Road haulage operators, consignors, freight forwarders, principal contractors, subcontractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect this Section.

PUBLIC

5. A road haulage operator which uses vehicles that are fitted with recording equipment complying with point (f), (g) or (h) of Article 2 of Section 4 of Part B and that fall within the scope of this Section, shall:

(i) ensure that all data are downloaded from the vehicle unit and driver card as regularly as is stipulated by the Party and that relevant data are downloaded more frequently so as to ensure that all data concerning activities undertaken by or for that road haulage operator are downloaded; and

(ii) ensure that all data downloaded from both the vehicle unit and driver card are kept for at least 12 months following recording and, should an inspecting officer request it, such data are accessible, either directly or remotely, from the premises of the road haulage operator.

For the purposes of this paragraph "downloaded" shall be interpreted in accordance with the definition laid down in point (h) of Article 2(2) of Section 2 of Part C.

The maximum period within which the relevant data shall be downloaded under point (i) of this paragraph shall be 90 days for data from the vehicle unit and 28 days for data from the driver card.

PUBLIC

ARTICLE 8

Exceptions

1. Provided that road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from Articles 4, 5 and 6 to the extent necessary to ensure the safety of persons, of the vehicle or its load. The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the suitable stopping place.

2. Provided that road safety is not thereby jeopardised, in exceptional circumstances, the driver may also depart from Article 4(1) and (2) and from Article 6(2) by exceeding the daily and weekly driving time by up to one hour in order to reach the employer's operational centre or the driver's place of residence to take a weekly rest period.

Under the same conditions, the driver may exceed the daily and weekly driving time by up to two hours, provided that an uninterrupted break of 30 minutes was taken immediately prior to the additional driving in order to reach the employer's operational centre or the driver's place of residence for taking a regular weekly rest period.

The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment, or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the destination or the suitable stopping place.

Any period of extension shall be compensated by an equivalent period of rest taken *en bloc* with any rest period, by the end of the third week following the week in question.

PUBLIC

3. Provided that road safety is not thereby jeopardised, each Party and, in the case of the Union, a Member State may grant exceptions from Articles 3 to 6 and make such exceptions subject to individual conditions on its own territory or, with the agreement of the other Party, on the territory of the other Party, applicable to transport by the following:

(a) vehicles owned or hired, without a driver, by public authorities to undertake transport by road which do not compete with private road haulage operators;

(b) vehicles used or hired, without a driver, by agricultural, horticultural, forestry, farming or fishery undertakings for carrying goods as part of their own entrepreneurial activity within a radius of up to 100 km from the base of the undertaking;

(c) agricultural tractors and forestry tractors used for agricultural or forestry activities, within a radius of up to 100 km from the base of the undertaking which owns, hires or leases the vehicle;

(d) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used by universal service providers to deliver items as part of the universal service. Those vehicles shall be used only within a 100 km radius from the base of the undertaking, and on condition that driving the vehicles does not constitute the driver's main activity;

(e) vehicles operating exclusively on islands not exceeding 2 300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles;

PUBLIC

(f) vehicles used for the transport of goods within a 100 km radius from the base of the undertaking and propelled by means of natural or liquefied gas or electricity, the maximum permissible mass of which, including the mass of a trailer or semi-trailer, does not exceed 7,5 tonnes;

(g) vehicles used in connection with sewerage, flood protection, water, gas and electricity maintenance services, road maintenance and control, door-to-door household refuse collection and disposal, telegraph and telephone services, radio and television broadcasting, and the detection of radio or television transmitters or receivers;

(h) specialised vehicles transporting circus and funfair equipment;

(i) specially fitted mobile project vehicles, the primary purpose of which is use as an educational facility when stationary;

(j) vehicles used for milk collection from farms and/or for the return to farms of milk containers or milk products intended for animal feed;

(k) specialised vehicles transporting money and/or valuables;

(l) vehicles used for carrying animal waste or carcasses which are not intended for human consumption;

(m) vehicles used exclusively on roads inside hub facilities such as ports, interports and railway terminals;

PUBLIC

(n) vehicles used for the transport of live animals from farms to local markets and vice versa or from markets to local slaughterhouses within a radius of up to 100 km;

(o) vehicles or combinations of vehicles carrying construction machinery for a construction undertaking, up to a radius of 100 km from the base of the undertaking, provided that driving the vehicles does not constitute the driver's main activity; and

(p) vehicles used for the delivery of ready-mixed concrete.

4. Provided that working conditions of drivers and road safety are not thereby jeopardised and that the limits set out in Article 3 of Section 3 of Part B are complied with, a Party, and in the case of the Union, a Member State, may grant temporary exceptions from the application of Articles 4, 5 and 6 of this Section to transport operations carried out in exceptional circumstances, in accordance with the procedure applicable in the Party.

The temporary exceptions shall be duly reasoned and notified immediately to the other Party. The Specialised Committee on Economy and Trade shall specify the modalities of that notification. Each Party shall immediately publish that information on a public website and shall ensure that its enforcement activities take into account an exception granted by the other Party.

PUBLIC

SECTION 3

WORKING TIME OF MOBILE WORKERS

PUBLIC

ARTICLE 1

Scope

1. This Section applies to mobile workers employed by road haulage operators of the Parties, undertaking journeys referred to in Articles 276 and 277 of this Agreement.

This Section shall also apply to self-employed drivers.

2. This Section shall supplement the provisions of Section 2 of Part B which take precedence over the provisions of this Section.

3. A Party may disapply the application of this Section for mobile workers and self-employed drivers.

4. Where a Party disapplies the application of this Section under paragraph 3, that Party shall notify the other Party.

ARTICLE 2

Definitions

PUBLIC

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

(1) "working time" means:

(a) in the case of mobile workers: the time from the beginning to the end of work, during which the mobile worker is at his or her workstation, at the disposal of the employer and exercising his or her functions or activities, that is to say:

– the time devoted to all road transport activities, in particular, the following:

(i) driving;

(ii) loading and unloading;

(iii) assisting passengers boarding and disembarking from the vehicle;

(iv) cleaning and technical maintenance; and

(v) all other work intended to ensure the safety of the vehicle and its cargo or to fulfil the legal or regulatory obligations directly linked to the specific transport operation under way, including monitoring of loading and unloading, administrative formalities with police, customs, immigration officers etc.,

– the times during which driver cannot dispose freely of his or her time and is required to be at his or her workstation, ready to take up normal work, with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Parties;

(b) in the case of self-employed drivers, the same definition applies to the time from the beginning to the end of work, during which the self-employed driver is at his or her workstation, at the disposal of the client and exercising his or her functions or activities other than general administrative work that is not directly linked to the specific transport operation under way.

The break times referred to in Article 4, the rest times referred to in Article 5 and, without prejudice to the legislation of the Parties or agreements between the social partners providing that such periods should be compensated or limited, the periods of availability referred to in point (2) of this Article, shall be excluded from working time;

(2) "periods of availability" means:

– periods other than those relating to break times and rest times during which the mobile worker is not required to remain at his or her workstation, but must be available to answer any calls to start or resume driving or to carry out other work. In particular such periods of availability shall include periods during which the mobile worker is accompanying a vehicle being transported by ferryboat or by train as well as periods of waiting at frontiers and those due to traffic prohibitions.

PUBLIC

– Those periods and their foreseeable duration shall be known in advance by the mobile worker, that is to say either before departure or just before the actual start of the period in question, or under the general conditions negotiated between the social partners and/or under the terms of the legislation of the Parties,

– for mobile workers driving in a team, the time spent sitting next to the driver or on the couchette while the vehicle is in motion;

(3) "workstation" means:

– the location of the main place of business of the road haulage operator for which the person performing mobile road transport activities carries out duties, together with its various subsidiary places of business, regardless of whether they are located in the same place as its head office or main place of business,

– the vehicle which the person performing mobile road transport activities uses when that person carries out duties, and

– any other place in which activities connected with transportation are carried out;

(4) "mobile worker" means, for the purpose of this Section, any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road on the territory of the other Party;

PUBLIC

(5) "self-employed driver" means anyone whose main occupation is the transport of goods by road for hire or reward, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom to, individually or through a cooperation between self-employed drivers, have commercial relations with several customers.

For the purposes of this Section, those drivers who do not satisfy those criteria shall be subject to the same obligations and benefit from the same rights as those provided for mobile workers by this Section;

(6) "person performing mobile road transport activities" means any mobile worker or self-employed driver who performs such activities;

(7) "week" means the period between 00.00 hours on Monday and 24.00 hours on Sunday;

(8) "night time" means a period of at least four hours, as defined by national law, between 00.00 hours and 07.00 hours; and

(9) "night work" means any work performed during night time.

PUBLIC

ARTICLE 3

Maximum weekly working time

1. Each Party shall take the measures necessary to ensure that the average weekly working time may not exceed 48 hours. The maximum weekly working time may be extended to 60 hours only if, over four months, an average of 48 hours a week is not exceeded.

2. Each Party shall take the measures necessary to ensure that working time for different employers is the sum of the working hours. The employer shall ask the mobile worker concerned in writing for an account of time worked for another employer. The mobile worker shall provide such information in writing.

ARTICLE 4

Breaks

Each Party shall take the measures necessary to ensure that, without prejudice to the provisions of Section 2 of Part B of this Annex, persons performing mobile road transport activities, in no circumstances work for more than six consecutive hours without a break. Working time shall be interrupted by a break of at least 30 minutes, if working hours total between six and nine hours, and of at least 45 minutes, if working hours total more than nine hours.

Breaks may be subdivided into periods of at least 15 minutes each.

PUBLIC

ARTICLE 5

Rest periods

For the purposes of this Section, apprentices and trainees who are in the service of an undertaking which operates transport services for goods by road journeys on the territory of the other Party shall be covered by the same provisions on rest time as other mobile workers pursuant to Section 2 of Part B of this Annex.

PUBLIC

ARTICLE 6

Night work

Each Party shall take the measures necessary to ensure that:

(a) if night work is performed, the daily working time does not exceed ten hours in each 24 period, and

(b) compensation for night work is given in accordance with national legislative measures, collective agreements, agreements between the two sides of industry and/or national practice, on condition that such compensation is not liable to endanger road safety.

ARTICLE 7

Derogations

1. Derogations from Articles 3 and 6 may, for objective or technical reasons or reasons concerning the organisation of work, be adopted by means of collective agreements, agreements between the social partners, or if that is not possible, by laws, regulations or administrative provisions provided that there is consultation of the representatives of the employers and workers concerned and efforts are made to encourage all relevant forms of social dialogue.

2. The option to derogate from Article 3 may not result in the establishment of a reference period exceeding six months, for calculation of the average maximum weekly working time of forty-eight hours.

3. The Specialised Committee on Economy and Trade shall be informed of the derogations applied by a Party in accordance with paragraph 1.

PUBLIC

ARTICLE 8

Information and records

Each Party shall ensure that:

(a) mobile workers are informed of the relevant national requirements, the internal rules of the road haulage operator and agreements between the two sides of industry, in particular collective agreements and any company agreements, reached on the basis of this Section; and

(b) the working time of persons performing mobile road transport activities is recorded. Records shall be kept for at least two years after the end of the period covered. Employers shall be responsible for recording the working time of mobile workers. Employers shall upon request provide mobile workers with copies of the records of hours worked.

ARTICLE 9

More favourable provisions

This Section shall not affect the right of each Party to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the health and safety of persons performing mobile road transport activities, or their right to facilitate or permit the application of collective agreements or other agreements concluded between the two sides of industry which are more favourable to the protection of the health and safety of mobile workers. Those rules shall be applied in a non-discriminatory manner.

PUBLIC

SECTION 4

USE OF TACHOGRAPHS BY DRIVERS

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ARTICLE 1

Subject matter and principles

This Section lays down requirements for drivers falling within the scope of Section 2 of Part B regarding the use of tachographs referred to in point (b) of Article 280 of this Agreement.

ARTICLE 2

Definitions

1. For the purposes of this Section, the definitions set out in Article 2 of Section 2 of Part B apply.

2. In addition to the definitions referred to in paragraph 1, for the purposes of this Section the following definitions apply:

(a) "tachograph" or "recording equipment" means the equipment intended for installation in road vehicles to display, record, print, store and output automatically or semi-automatically details of the movement, including the speed, of such vehicles and details of certain periods of activity of their drivers;

(b) "record sheet" means a sheet designed to accept and retain recorded data, to be placed in an analogue tachograph, and on which the marking devices of the analogue tachograph continuously inscribe the information to be recorded;

(c) "tachograph card" means a smart card, intended for use with the tachograph, which allows identification by the tachograph of the role of the cardholder and allows data transfer and storage;

(d) "driver card" means a tachograph card, issued by the competent authorities in a Party to a particular driver, which identifies the driver and allows for the storage of driver activity data;

(e) "analogue tachograph" means a tachograph complying with the specifications in Annex I to Regulation (EU) No 165/2014 of the European Parliament and of the Council[1], as adapted by Appendix X-B-4-1;

(f) "digital tachograph" means a tachograph complying with one of the following set of specifications, as adapted by Appendix X-B-4-2:

– Annex IB to Regulation (EEC) No 3821/85 applicable until 30 September 2011;

– Annex IB to Regulation (EEC) No 3821/85 applicable from 1 October 2011; or

– Annex IB to Regulation (EEC) No 3821/85 applicable from 1 October 2012;

[1] Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport (OJ EU L 60, 28.2.2014, p. 1, ELI: http://data.europa.eu/eli/reg/2014/165/oj).

(g) "smart tachograph 1" means a tachograph complying with Annex IC to Commission Implementing Regulation (EU) 2016/799[1] applicable from 15 June 2019 and until 20 August 2023, as adapted by Appendix X-B-4-3;

(h) "smart tachograph 2" means a tachograph complying with Annex IC to Commission Implementing Regulation (EU) 2016/799, as adapted by Appendix X-B-4-4.

(i) "event" means an abnormal operation detected by the digital tachograph which may result from a fraud attempt;

(j) "non-valid card" means a card detected as faulty, or whose initial authentication failed, or whose start of validity date is not yet reached, or whose expiry date has passed.

ARTICLE 3

Use of driver cards

1. The driver card is personal.

2. A driver may hold no more than one valid driver card, and is only authorised to use his or her own personalised driver card. A driver shall not use a driver card which is defective or which has expired.

[1] Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components (OJ EU L 139, 26.5.2016, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2016/799/oj).

ARTICLE 4

Issuing of driver cards

1. Driver cards shall be requested to the competent authority in the Party where the driver has his or her normal residence.

2. For the purposes of this Article, "normal residence" means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where that person is living.

However, the normal residence of a person whose occupational ties are in a place different from their personal ties and who consequently lives in turn in different places situated in the two Parties shall be regarded as being the place of their personal ties, provided that such person returns there regularly. This last condition does not need to be complied with where the person is living in a Party in order to carry out a fixed-term assignment.

3. Drivers shall give proof of their normal residence by any appropriate means, such as their identity card or any other valid document.

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ARTICLE 5

Renewal of driver cards

Where a driver wishes to renew his or her driver card, the driver shall apply to the competent authorities in the Party of his or her normal residence not later than 15 working days before the expiry date of the card.

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ARTICLE 6

Use of driver cards and record sheets

1. Drivers shall use record sheets or driver cards every day on which they drive, starting from the moment they take over the vehicle. The record sheet or driver card shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised or is necessary in order to enter the symbol of the country after having crossed a border. No record sheet or driver card may be used to cover a period longer than that for which it is intended.

2. Drivers shall adequately protect the record sheets or driver cards, and shall not use dirty or damaged record sheets or driver cards. The driver shall ensure that, taking into account the length of the period of service, the printing of data from the tachograph at the request of a control officer can be carried out correctly in the event of an inspection.

3. When, as a result of being away from the vehicle, a driver is unable to use the tachograph fitted to the vehicle, the periods of time referred to in points (b)(ii), (b)(iii) and (b)(iv) of paragraph 5 shall:

(a) if the vehicle is fitted with an analogue tachograph, be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the record sheet; or

(b) if the vehicle is fitted with a digital, smart tachograph 1 or smart tachograph 2, be entered onto the driver card using the manual entry facility provided for in the tachograph.

Each Party shall not impose on drivers a requirement to present forms attesting to their activities while away from the vehicle.

4. Where there is more than one driver on board a vehicle fitted with a digital, a smart tachograph 1 or smart tachograph 2, each driver shall ensure that his or her driver card is inserted into the correct slot in the tachograph.

Where there is more than one driver on board a vehicle fitted with an analogue tachograph, the drivers shall amend the record sheets as necessary, so that the relevant information is recorded on the record sheet of the driver who is actually driving.

5. Drivers shall:

(a) ensure that the time recorded on the record sheet corresponds to the official time in the country of registration of the vehicle;

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(b) operate the switch mechanisms enabling the following periods of time to be recorded separately and distinctly:

(i) under the sign: driving time,

(ii) under the sign: "other work", which means any activity other than driving, as defined in point (a) of Article 2 of Section 3 of Part B, and also any work for the same or another employer within or outside of the transport sector,

(iii) under the sign: "availability", as defined in point (b) of Article 2 of Section 3 of Part B,

(iv) under the sign: breaks, rest, annual leave or sick leave, and

(v) under the sign for "ferry/train": In addition to the sign: the rest period spent on a ferry or train as required in paragraph 12 of Article 6 of Section 2 of Part B.

6. Each driver of a vehicle fitted with an analogue tachograph shall enter the following information on his or her record sheet:

(a) on beginning to use the record sheet – the driver's surname and first name;

(b) the date and place where use of the record sheet begins and the date and place where such use ends;

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(c) the registration number of each vehicle to which the driver is assigned, both at the start of the first journey recorded on the record sheet and then, in the event of a change of vehicle, during use of the record sheet;

(d) the odometer reading:

(i) at the start of the first journey recorded on the record sheet,

(ii) at the end of the last journey recorded on the record sheet,

(iii) in the event of a change of vehicle during a working day, the reading on the first vehicle to which the driver was assigned and the reading on the next vehicle;

(e) the time of any change of vehicle; and

(f) the symbols of the countries in which the daily working period started and finished. The driver shall also enter the symbol of the country that the driver enters after crossing a border of an EU Member State and of the United Kingdom, in respect of Gibraltar, at the beginning of the driver's first stop in that Member State or the United Kingdom, in respect of Gibraltar. That first stop shall be made at the nearest possible stopping place at or after the border. Where the crossing of the border takes place on a ferry or train, the driver shall enter the symbol of the country at the port or station of arrival.

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7. The driver shall enter in the digital tachograph the symbols of the countries in which the daily working period started and finished.

The driver shall also enter the symbol of the country that the driver enters after crossing a border of a Party, or in the case of the Union, a Member State at the beginning of the driver's first stop in that Party, or in the case of the Union, the Member State. That first stop shall be made at the nearest possible stopping place at or after the border. Where the crossing of the border takes place on a ferry or train, the driver shall enter the symbol of the country at the port or station of arrival.

A Party or, in the case of the Union, a Member State may require drivers of vehicles engaged in transport operations inside their territory to add more detailed geographic specifications to the country symbol, provided that each Party notifies in advance the other Party about those detailed geographic specifications.

It shall not be necessary for drivers to enter the information referred to in the first sentence of the first subparagraph if the tachograph is automatically recording that location data.

ARTICLE 7

Correct use of tachographs

1. Transport undertakings and drivers shall ensure the correct functioning and proper use of digital tachographs and driver cards. Transport undertakings and drivers using analogue tachographs shall ensure their correct functioning and the proper use of record sheets.

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2. It shall be forbidden to falsify, conceal, suppress or destroy data recorded on the record sheet or stored in the tachograph or on the driver card, or print-outs from the tachograph. Any manipulation of the tachograph, record sheet or driver card which could result in data and/or printed information being falsified, suppressed or destroyed shall also be prohibited. No device which could be used to that effect shall be present on the vehicle.

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ARTICLE 8

Stolen, lost or defective driver cards

1. Issuing authorities of the Parties shall keep records of issued, stolen, lost or defective driver cards for a period at least equivalent to their period of validity.

2. If a driver card is damaged or if it malfunctions, the driver shall return it to the competent authority in the country of the driver's normal residence. Theft of the driver card shall be formally declared to the competent authorities of the State where the theft occurred.

3. Any loss of the driver card shall be reported in a formal declaration to the competent authorities in the issuing Party and to the competent authorities in the Party of the driver's normal residence if that is different.

4. If the driver card is damaged, malfunctions or is lost or stolen, the driver shall, within seven days, apply for its replacement to the competent authorities in the Party of the driver's normal residence.

5. In the circumstances set out in paragraph 4, the driver may continue to drive without a driver card for a maximum period of 15 days or for a longer period if that is necessary for the vehicle to return to the premises where it is based, provided that the driver can prove the impossibility of producing or using the card during that period.

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ARTICLE 9

Damaged driver cards and record sheets

1. In the event of damage to a record sheet bearing recordings or to a driver card, drivers shall keep the damaged record sheet or driver card together with any spare record sheet used to replace it.

2. Where a driver card is damaged, malfunctions, or is lost or stolen, the driver shall:

(a) at the start of his or her journey, print out the details of the vehicle that the driver is driving, and enter on that printout:

(i) details that enable the driver to be identified (name, driver card or driving licence number), including the driver's signature; and

(ii) the periods referred to in points (b)(ii), (b)(iii) and (b)(iv) of Article 6(5);

(b) at the end of the journey, print out the information relating to periods of time recorded by the tachograph, record any periods of other work, availability and rest taken since the printout made at the start of the journey, where not recorded by the tachograph, and mark on that document details enabling the driver to be identified (name, driver card or driving licence number), including the driver's signature.

ARTICLE 10

Records to be carried by the driver

1. Where a driver drives a vehicle fitted with an analogue tachograph, the driver shall be able to produce, whenever an authorised control officer so requests:

(i) the record sheets for the current day and the preceding 28 days;

(ii) the driver card, if one is held; and

(iii) any manual records and printouts made during the current day and the previous 28 days.

2. Where the driver drives a vehicle fitted with a digital, a smart 1 or smart 2 tachograph, the driver shall be able to produce, whenever an authorised control officer so requests:

(i) the driver's driver card;

(ii) any manual records and printouts made during the current day and the previous 28 days; and

(iii) the record sheets corresponding to the same period as that referred to in point (ii) during which the driver drove a vehicle fitted with an analogue tachograph.

From 31 December 2024, the period of 28 days referred to in points (i) and (iii) of paragraph 1 and in point (ii) of paragraph 2 shall be replaced by 56 days.

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3. An authorised control officer may check compliance with Section 2 of Part B by analysis of the record sheets, of the displayed, printed or downloaded data which have been recorded by the tachograph or by the driver card or, failing that, of any other supporting document that justifies non-compliance with a provision of that Section.

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ARTICLE 11

Procedures for drivers in the event of malfunctioning equipment

While the tachograph is unserviceable or malfunctioning, the driver shall mark data enabling him to be identified (name, driver card or driving licence number), including a signature, as well as the information for the various periods of time which are no longer recorded or printed out correctly by the tachograph:

(a) on the record sheet or sheets; or

(b) on a temporary sheet to be attached to the record sheet or to be kept together with the driver card.

ARTICLE 12

Enforcement measures

1. Each Party shall adopt all appropriate measures to ensure observance of the provisions of Sections 2, 3 and 4 of Part B, in particular by ensuring annually an adequate level of roadside checks and checks performed at the premises of undertakings covering a large and representative cross-section of mobile workers, drivers, undertakings and vehicles of all transport categories falling within the scope of those Sections.

The competent authorities in each Party shall organise the checks so that:

(i) during each calendar year, a minimum of 3 % of the days worked by the drivers of vehicles falling within the scope of Section 2 of Part B applies shall be checked; and

(ii) at least 30 % of the total number of working days checked shall be checked at the roadside and at least 50 % at the premises of undertakings.

The elements of roadside checks shall include:

(i) daily and weekly driving periods, interruptions and daily and weekly rest periods;

(ii) the record sheets of the preceding days, which shall be on board the vehicle, and/or the data stored for the same period on the driver card and/or in the memory of the tachograph and/or on the printouts, when required; and

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(iii) the correct functioning of the tachograph.

Those checks shall be carried out without discrimination among vehicles, undertakings and drivers whether resident or not, and regardless of the origin or destination of the journey or type of tachograph.

The elements of checks on the premises of undertakings shall include, in addition to the elements subject to roadside checks:

(i) weekly rest periods and driving periods between those rest periods;

(ii) fortnightly driving limits;

(iii) compensation for reduced weekly rest periods in accordance with Article 6(6) and (7) of Section 2 of Part B; and

(iv) use of record sheets and/or vehicle unit and driver card data and printouts and/or the organisation of drivers' working time.

2. If the findings of a roadside check on the driver of a vehicle registered in the territory of the other Party provide grounds to believe that infringements have been committed which cannot be detected during the check due to lack of necessary data, the competent authorities in each Party shall assist each other to clarify the situation. In cases where, to that end, the competent authorities in a Party carry out a check at the premises of the undertaking, the results of that check shall be communicated to the competent authorities of the other Party.

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3. The competent authorities in the Parties shall work in cooperation with each other in the organisation of concerted roadside checks.

4. Each Party shall introduce a risk rating system for undertakings based on the relative number and severity of any infringements, as set out in Appendix X-A-1-1 and of any infringements included in the list set out in Appendix X-A-1-1bis.

5. Undertakings with a high risk rating shall be checked more closely and more often.

6. Each Party and, in the case of the Union, each Member State, shall enable its competent authorities to impose a penalty on a road haulage operator and/or a driver for an infringement of the applicable provisions on driving time, breaks and rest periods detected on its territory and for which a penalty has not already been imposed, even where that infringement has been committed on the territory of the other Party or, in the case of the Union, the territory of a Member State or of a third country.

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ADAPTATIONS TO THE TECHNICAL SPECIFICATIONS
OF THE ANALOGUE TACHOGRAPH

Annex I to Regulation (EU) No 165/2014 is adapted for the purpose of this Section as follows:

(a) In Section III (Construction requirements for recording equipment), in paragraph 4.1 of subsection (c) (Recording instruments), for "points (ii), (iii) and (iv) of Article 34(5)(b) of this Regulation" substitute "points (ii), (iii) and (iv) of point (b) of Article 6(5) of Section 4 of Part B of Annex X of this Agreement";

(b) In Section III (Construction requirements for recording equipment), in paragraph 4.2 of subsection (c) (Recording instruments), for "Article 34 of this Regulation" substitute "Article 6(5) of Section 4 of Part B of Annex X of this Agreement";

(c) In Section IV (Record sheets), in the third subparagraph of paragraph 1 of subsection (a) (General points), for "Article 34 of this Regulation" substitute "Article 6(6) of Section 4 of Part B of Annex X of this Agreement";

(d) In Section V (Installation of recording equipment), in the first subparagraph of paragraph 5, for "this Regulation" substitute "Section 4 of Part B and Section 2 of Part C of Annex X of this Agreement";

(e) In Section V (Installation of recording equipment), in the third subparagraph of paragraph 5, for "Part A of Annex II to Directive 2007/46/EC of the European Parliament and of the Council" substitute "the Consolidated Resolution on the Construction of Vehicles (R.E.3)" and for "this Regulation" substitute "Section 2 of Part C of Annex X of this Agreement";

(f) In Section VI (Checks and inspections), in the text before paragraph 1, after "Member States" insert "and the United Kingdom, in respect of Gibraltar";

(g) In Section VI (Checks and inspections), in the second subparagraph of paragraph 1 (Certification of new or repaired instruments), after "Member States" insert "and the United Kingdom in respect of Gibraltar, and for "this Regulation" substitute "Section 4 of Part B and Section 2 of Part C of Annex X of this Agreement";

(h) In Section VI (Checks and inspections), in subparagraph (b) of paragraph 3 (Periodic inspections), after "Member State" insert "and the United Kingdom, in respect of Gibraltar".

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ADAPTATIONS TO THE TECHNICAL SPECIFICATIONS
OF THE DIGITAL TACHOGRAPH

Annex IB to Regulation (EEC) No 3821/85, including the Appendixes introduced by Council Regulation (EC) No 2135/98[1], is adapted for the purpose of this Section as follows:

1. In the case of the United Kingdom, in respect of Gibraltar, the references to "Member State" are replaced by "Party", except for the references in subsection IV (Construction and functional requirements for tachograph cards), paragraph 174 and subsection VII (Card issuing), paragraph 268a;

2. For "Council Regulation (EEC) No 3820/85" and "Regulation (EC) No 561/2006" substitute "Section 2 of Part B of Annex X of this Agreement";

Section I (Definitions) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

[1] Council Regulation (EC) No 2135/98 of 24 September 1998 amending Regulation (EEC) No 3821/85 on recording equipment in road transport and Directive 88/599/EEC concerning the application of Regulations (EEC) No 3820/84 and (EEC) No 3821/85 (OJ EC L 274, 9.10.1998, p. 1, ELI: http://data.europa.eu/eli/reg/1998/2135/oj).

3. Point (u) is replaced by the following:

"(u) 'effective circumference of the wheels' means the average of the distances travelled by each of the wheels moving the vehicle (driving wheels) in the course of one complete rotation. The measurement of those distances shall be made under standard test conditions as defined under requirement 414 and is expressed in the form 'l = … mm'. Vehicle manufacturers may replace the measurement of those distances by a theoretical calculation which takes into account the distribution of the weight on the axles, vehicle unladen in normal running order, namely with coolant fluid, lubricants, fuel, tools, spare-wheel and driver. The methods for such theoretical calculation are subject to approval by the competent authority in a Party and can take place only before tachograph activation;"

4. In point (bb), the reference to "Council Directive 92/6/EEC" is replaced by "the applicable law of each Party".

5. Point (ii) is replaced by the following:

"'security certification' means: process to certify, by a Common Criteria certification body, that the recording equipment (or component) or the tachograph card under investigation fulfils the security requirements defined in Appendix 10 (Generic security targets);"

6. In point (mm), the reference to "Directive 92/23/EEC" is replaced by "UNECE Regulation No 54".

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7. In point (nn), footnote 17 is replaced by the following:

"'Vehicle Identification Number' means a fixed combination of characters assigned to each vehicle by the manufacturer, which consists of two sections: the first, composed of not more than six characters (letters or figures), identifying the general characteristics of the vehicle, in particular the type and model; the second, composed of eight characters of which the first four may be letters or figures and the other four figures only, providing, in conjunction with the first section, clear identification of a particular vehicle."

8. In point (rr), the first indent is replaced by the following:

"– installed and used only in M1 and N1 type vehicles as defined in the Consolidated Resolution on the Construction of Vehicles (R.E.3)",

Section II (General characteristics and functions of the recording equipment) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

9. In paragraph 004, the last subparagraph is deleted.

Section III (Construction and functional requirements for recording equipment) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

10. In paragraph 065, the reference to "Directive 2007/46/EC" is replaced by "the Consolidated Resolution on the Construction of Vehicles (R.E.3)."

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11. In paragraph 162, the reference to "Commission Directive 95/54/EC of 31 October 1995 adapting to technical progress Council Directive 72/245/EEC" is replaced by "UNECE Regulation No 10".

Section IV (Construction and functional requirements for tachograph cards) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

12. In paragraph 174, the reference to "UK: The United Kingdom" is replaced by "For the United Kingdom, in respect of Gibraltar, the distinguishing sign shall be the UK."

13. In paragraph 185, the reference to "Community territory" is replaced by "the territory of the Union and Gibraltar".

14. In paragraph 188, the reference to "Commission Directive 95/54/EC of 31 October 1995" is replaced by "UNECE Regulation No 10".

15. In paragraph 189, the last subparagraph is deleted.

Section V (Installation of recording equipment) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

16. In paragraph 250a, the reference to "Regulation (EC) No 68/2009" is replaced by "Appendix 12 of this Annex."

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17. The introductory sentence is replaced by the following:

"Requirements on the circumstances in which seals may be removed, as referred to in Article 5(5) of Section 2 of Part C of this Annex X, are defined in Chapter V(3) of this Annex"

18. Under subsection 1 (Approval of fitters or workshops), the reference to "Article 12(1) of this Regulation" is replaced by "Articles 5(1) and 8 of Section 2 of Part C of this Annex".

Section VII (Card issuing) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

19. In paragraph 268a, after "Member States", wherever it occurs, insert " and the United Kingdom, in respect of Gibraltar".

Section VIII (Type approval of recording equipment and tachograph cards) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

20. In paragraph 271, omit "in accordance with Article 5 of this Regulation".

Appendix 1 (Data dictionary) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

21. In point 2.111, the reference to "Directive 92/23 (EEC) 31.3.1992, OJ L 129, p. 95" is replaced by "UNECE Regulation No 54".

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Appendix 9 (Type approval List of minimum required tests) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

21. In subpoint 5.1 of Section 2 (Vehicle unit functional tests), the reference to "Directive 95/54/EC" is replaced by "UNECE Regulation No 10".

22. In subpoint 5.1 of Section 3 (Motion sensor functional tests), the reference to "Directive 95/54/EC" is replaced by "UNECE Regulation No 10".

Appendix 12 (Adaptor for M1 and N1 category vehicles) of Annex IB to Regulation (EEC) No 3821/85 is adapted for the purpose of this Section as follows:

23. In Section 4 (Construction and functional requirements for the adaptor) in paragraph 4.5 (performance characteristics) in ADA_023, for "Commission Directive 2006/28/EC adapting to technical progress Council Directive 72/245/EEC" substitute "UNECE Regulation No 10".

24. In point 5.1 of the table under subsection 7.2 (Functional certificate), for "Directive 2006/28/EC" substitute "UNECE Regulation No 10".

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ADAPTATIONS TO THE TECHNICAL SPECIFICATIONS
OF THE SMART TACHOGRAPH 1

Commission Implementing Regulation (EU) 2016/799, including its Annexes and Appendixes, in its version until 20 August 2023, is adapted for the purpose of this Section as follows:

1. In the case of the United Kingdom, in respect of Gibraltar, the references to "Member State" are replaced by "Party", except for the references in point (229) of subsection 4.1 and in point (424) of Section 7;

2. For "Regulation (EEC) No 3820/85" and "Regulation (EC) No 561/2006" substitute "Section 2 of Part B of Annex X of this Agreement";

3. For "Regulation (EU) No 165/2014" substitute "Section 4 of Part B and Section 2 of Part C of Annex X of this Agreement, except for the references in point (402) of subsection 5.3 and in point (424) of Section 7";

4. For "Directive (EU) 2015/719" and for "Council Directive 96/53/EC" substitute "Section 1 of Part C of Annex X of this Agreement".

Section 1 (Definitions) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

5. Point (u) is replaced by the following:

"(u) 'effective circumference of the wheels' means:

the average of the distances travelled by each of the wheels moving the vehicle (driving wheels) in the course of one complete rotation. The measurement of those distances shall be made under standard test conditions as defined under requirement 414 and is expressed in the form 'l = … mm'. Vehicle manufacturers may replace the measurement of those distances by a theoretical calculation which takes into account the distribution of the weight on the axles, vehicle unladen in normal running order, namely with coolant fluid, lubricants, fuel, tools, spare-wheel and driver. The methods for such theoretical calculation are subject to approval by the competent authority in a Party and can take place only before tachograph activation;";

6. In point (hh), the reference to "Council Directive 92/6/EEC" is replaced by "the applicable law of each Party";

7. In point (uu), the reference to "Directive 92/23/EEC" is replaced by "UNECE Regulation No 54";

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8. In point (vv), footnote 9 is replaced by the following:

"'Vehicle Identification Number' means a fixed combination of characters assigned to each vehicle by the manufacturer, which consists of two sections: the first, composed of not more than six characters (letters or figures), identifying the general characteristics of the vehicle, in particular the type and model; the second, composed of eight characters of which the first four may be letters or figures and the other four figures only, providing, in conjunction with the first section, clear identification of a particular vehicle.";

9. In point (yy), the first indent is replaced by the following:

"– installed and used only in M1 and N1 type vehicles as defined in the Consolidated Resolution on the Construction of Vehicles (R.E.3);";

10. Point (aaa) is deleted;

11. In point (ccc), the first paragraph is replaced by "15 June 2019".

Section 2 (General characteristics and functions of the recording equipment) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

12. The last subparagraph of paragraph (7) of subsection 2.1 is deleted.

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Section 3 (Construction and functional requirements for recording equipment) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

13. In point (200) of subsection 3.20, the second sentence of the third subparagraph is deleted.

14. Point (201) of subsection 3.20 is replaced by the following:

"The vehicle unit may also be able to output the following data using an appropriate dedicated serial link independent from an optional CAN bus connection (ISO 11898 Road vehicles – Interchange of digital information – Controller Area Network (CAN) for high speed communication), to allow their processing by other electronic units installed in the vehicle:

– current UTC date and time,

– speed of the vehicle,

– total distance travelled by the vehicle (odometer),

– currently selected driver and co-driver activity,

– information if any tachograph card is currently inserted in the driver slot and in the co-driver slot and (if applicable) information about the corresponding cards identification (card number and issuing country).

Other data may also be output in addition to that minimum list.

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When the ignition of the vehicle is ON, those data shall be permanently broadcast. When the ignition of the vehicle is OFF, at least any change of driver or co-driver activity and/or any insertion or withdrawal of a tachograph card shall generate a corresponding data output. In the event that data output has been withheld whilst the ignition of the vehicle is OFF, that data shall be made available once the ignition of the vehicle is ON again.

The driver consent shall be required in case personal data are transmitted."

Section 4 (Construction and functional requirements for tachograph cards) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

In Point (229) of the subsection 4.1, the following subparagraph is added:

"For the United Kingdom, in respect of Gibraltar, the distinguishing sign shall be the UK.";

15. In Point (229) of the subsection 4.1, the following subparagraph is added:

16. In point (237), for "Article 26.4 of Regulation (EU) No. 165/2014" substitute "Article 9(2) of Section 2 of Part C of Annex X of this Agreement";

17. In point (241) of subsection 4.4 of Chapter 4 of this Annex, the word "Community territory" is replaced by "the territory of the Union and Gibraltar";

18. Point (246) in subsection 4.5 is deleted.

PUBLIC

Section 5 (Installation of recording equipment) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

19. The first paragraph of point (397) in subsection 5.2 is replaced by the following:

"(397) For M1 and N1 vehicles only, and which are fitted with an adaptor in conformity with Appendix 16 of this Annex and where it is not possible to include all the information necessary, as described in Requirement 396, a second, additional, plaque may be used. In such cases, this additional plaque shall contain at least the last four indents described in Requirement 396.";

20. In point (402) of subsection 5.3, for "Article 22(3) of Regulation (EU) No 165/2014" substitute "Article 5(3) of Section 2 of Part C of Annex X to this Agreement.".

Section 6 (Checks, inspections and repairs) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

21. The introductory sentence is replaced by the following:

"Requirements on the circumstances in which seals may be removed are defined in Chapter 5.3 of this Annex.";

PUBLIC

Section 7 (Card issuing) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

22. In point (424), after the reference to "Member States" insert " the United Kingdom, in respect of Gibraltar", and for the reference to "Article 31 of Regulation (EU) No 165/2014" substitute "Article 13 of Section 2 of Part C of Annex X to this Agreement".

Appendix 1 (Data dictionary) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

23. In point 2.163, for "Directive 92/23/EEC" substitute "UNECE Regulation No 54".

Appendix 11 (Common security mechanisms) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

24. In point 9.1.4 (Equipment Level: Vehicle Units), in the first note below CSM_78, for "Regulation (EU) No 581/2010" substitute "Article 7(5) of Section 2 of Part B of Annex X to this Agreement".

25. In point 9.1.5 (Equipment Level: Tachograph Cards), in the note below CSM_89, for "Regulation (EU) No 581/2010" substitute "Article 7(5) of Section 2 of Part B of Annex X to this Agreement".

PUBLIC

Appendix 12 (Positioning based on Global Navigation Satellite System (GNSS)) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

26. The second subparagraph of Section 1 (Introduction) is deleted.

27. In Section 2 (Specification of the GNSS receiver), the reference to "compatibility with the services provided by the Galileo and European Geostationary Navigation Overlay Service (EGNOS) programmes as set out in Regulation (EU) No 1285/2013 of the European Parliament and of the Council", is replaced by "compatibility with Satellite Based Augmentation Systems (SBAS)".

Appendix 16 (Adaptor for M1 and N1 category vehicles) of Annex IC to Commission Implementing Regulation (EU) 2016/799 is adapted for the purpose of this Section as follows:

28. In point 5.1 in the table under Section (7) (Type approval of recording equipment when an adaptor is used), the reference to "Directive 2006/28/EC" is replaced by "UNECE Regulation No 10".

PUBLIC

PUBLIC

ADAPTATIONS TO THE TECHNICAL SPECIFICATIONS
FOR SMART TACHOGRAPH 2

Commission Implementing Regulation (EU) 2016/799, including its Annexes and Appendixes is adapted for the purpose of this Section as follows:

The following adaptations apply throughout Annex I C, including its Appendices 1 to 17:

(a) in the case of the United Kingdom, in respect of Gibraltar, the references to "Member State" or "Member States", wherever they occur, are replaced by "Party", except for the references in point (229) of subsection 4.1 and in point (424) of Section 7;

(b) for "Regulation (EC) No 561/2006" or "Regulation (EC) No 561/2006 of the European Parliament and of the Council" substitute "Section 2 of Part B of Annex X to this Agreement";

(c) for "Regulation (EU) No 165/2014" substitute "Section 4 of Part B and Section 2 of Part C of Annex X to this Agreement", except for the references in points (226d), (237), (402), (424), ITS_01, MIG_025, and, in Appendix 14, in the first paragraph of section 1, in the second paragraph of section 2, in section 3 and in point DSC_26;

(d) for "Directive (EU) 2015/719" and for "Council Directive 96/53/EC" substitute "Section 1 of Part C of Annex X to this Agreement";

(e) for "Annex I B to Regulation (EEC) No 3821/85" substitute "Annex I B to Regulation (EEC) No 3821/85 as adapted by Appendix X-B-4-2 of Annex X to this Agreement";

1. Section (Definitions) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(f) point (u) is replaced by the following:

"(u) 'effective circumference of the wheels' means: the average of the distances travelled by each of the wheels moving the vehicle (driving wheels) in the course of one complete rotation. The measurement of those distances shall be made under standard test conditions as defined under requirement 414 and is expressed in the form 'l = … mm'. Vehicle manufacturers may replace the measurement of those distances by a theoretical calculation which takes into account the distribution of the weight on the axles, vehicle unladen in normal running order, namely with coolant fluid, lubricants, fuel, tools, spare-wheel and driver. The methods for such theoretical calculation are subject to approval by the competent authority in a Party and can take place only before tachograph activation;";

(g) in point (hh), the reference to "Council Directive 92/6/EEC, as last amended" is replaced by "the applicable law of each Party";

(h) in point (uu), the reference to "Directive 92/23/EEC, as last amended" is replaced by UNECE Regulation No 54;

PUBLIC

(i) the footnote in point (vv) is replaced by the following:

"'Vehicle Identification Number' means a fixed combination of characters assigned to each vehicle by the manufacturer, which consists of two sections: the first, composed of not more than six characters (letters or figures), identifying the general characteristics of the vehicle, in particular the type and model; the second, composed of eight characters of which the first four may be letters or figures and the other four figures only, providing, in conjunction with the first section, clear identification of a particular vehicle.";

(j) in point (yy), the first indent is replaced by the following:

"– installed and used only in M1 and N1 type vehicles as defined in the Consolidated Resolution on the Construction of Vehicles (R.E.3);";

(k) point (aaa) is deleted;

(l) in point (ccc), the definition of "introduction date" is replaced by "21 February 2024";

2. Section 2 (General characteristics and functions of the recording equipment) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(m) the last subparagraph of paragraph (7) of subsection 2.1 is replaced by the following:

"This is done in accordance with Article 4 of Section 2 of Part C of Annex X to this Agreement.";

PUBLIC

3. Section 3 (Construction and functional requirements for recording equipment) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(n) point (201) of subsection 3.20 is replaced by the following:

"The vehicle unit may also be able to output the following data using an appropriate dedicated serial link independent from an optional CAN bus connection (ISO 11898 Road vehicles – Interchange of digital information – Controller Area Network (CAN) for high speed communication), to allow their processing by other electronic units installed in the vehicle:

– current UTC date and time,

– speed of the vehicle,

– total distance travelled by the vehicle (odometer),

– currently selected driver and co-driver activity,

– information if any tachograph card is currently inserted in the driver slot and in the co-driver slot and (if applicable) information about the corresponding cards identification (card number and issuing country).

Other data may also be output in addition to that minimum list.

PUBLIC

When the ignition of the vehicle is ON, those data shall be permanently broadcast. When the ignition of the vehicle is OFF, at least any change of driver or co-driver activity and/or any insertion or withdrawal of a tachograph card shall generate a corresponding data output. In the event that data output has been withheld whilst the ignition of the vehicle is OFF, that data shall be made available once the ignition of the vehicle is ON again.

The driver consent shall be required in case personal data are transmitted.";

(o) in point (226d) of section 3.28, ", in accordance with Article 12(5) of Regulation (EU) No 165/2014" is deleted;

4. Section 4 (Construction and functional requirements for tachograph cards) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(p) in point (229) of subsection 4.1, the following subparagraph is added:

"For the United Kingdom, in respect of Gibraltar, the distinguishing sign shall be GIB";

(q) in point (237), for "Article 26.4 of Regulation (EU) No. 165/2014" substitute "Article 9(2) of Section 2 of Part C of Annex 31 to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part";

(r) in point (241) of subsection 4.4, the word "Community territory" is replaced by "the territory of the Union and of the United Kingdom, in respect of Gibraltar";

PUBLIC

5. Section 5 (Installation of recording equipment) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(s) The first paragraph of point (397) in subsection 5.2 is replaced by the following:

"(397) For M1 and N1 vehicles only, and which are fitted with an adaptor in conformity with Appendix 16 of this Annex and where it is not possible to include all the information necessary, as described in Requirement 396, a second, additional, plaque may be used. In such cases, this additional plaque shall contain at least the last four indents described in Requirement 396.";

(t) In point (402) of subsection 5.3, for "Article 22(3) of Regulation (EU) No 165/2014" substitute "Article 5(3) of Section 2 of Part C of Annex X to this Agreement.";

6. Section 6 (Checks, inspections and repairs) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(u) the introductory sentence is replaced by the following: "Requirements on the circumstances in which seals may be removed are defined in Chapter 5.3 of this Annex.";

7. Section 7 (Card issuing) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(v) in point (424), after the reference to "Member States" insert "and the United Kingdom, in respect of Gibraltar", and for the reference to "Article 31 of Regulation (EU) No 165/2014" substitute "Article 13 of Section 2 of Part C of Annex X to this Agreement";

PUBLIC

8. Appendix 1 (Data dictionary) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(w) in point 2.163, for "Directive 92/23 (EEC) 31/03/92 O.J. L129 p.95" substitute "UNECE Regulation No 54";

9. Appendix 11 (Common security mechanisms) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(x) in point 9.1.4 (Equipment Level: Vehicle Units), in the first note below CSM_78, for "Regulation (EU) No 581/2010" substitute "Article 7(5) of Section 2 of Part B of Annex X to this Agreement";

(y) in point 9.1.5 (Equipment level: Tachograph Cards), in the note below CSM_89, for "Regulation (EU) No 581/2010" substitute "Article 7(5) of Section 2 of Part B of Annex X to this Agreement";

10. Appendix 12 (Positioning based on Global Navigation Satellite System (GNSS)) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(z) in Section 2 (Basic Characteristics of the GNSS Receiver), the reference to "compatibility with the services provided by the Galileo and European Geostationary Navigation Overlay Service (EGNOS) programmes as set out in Regulation (EU) No 1285/2013 of the European Parliament and of the Council", is replaced by "compatibility with Satellite Based Augmentation Systems (SBAS)";

PUBLIC

11. Appendix 13 (ITS Interface) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(aa) in requirement ITS_01, the terms ", requested in Articles 10 and 11 of Regulation (EU) No 165/2014" are deleted;

12. Appendix 14 (Remote Communication Function) of Annex IC to Implementing Regulation (EU) 2016/799 is further adapted as follows:

– In the introductory paragraph of Section 1, omit "as required in Article 9 of Regulation (EU) No 165/2014";

– In the second paragraph of section 2, omit "as defined in Article 9 of Regulation (EU) No 165/2014";

– In point DSC_26, omit "in accordance with Article 9 of Regulation (EU) No 165/2014".

13. Appendix 15 (Migration: Managing the co-existence of equipment generations and versions) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(bb) in subsection 2.2, "Annex I C of this Regulation" is replaced by "Annex I C of this Regulation as adapted by Appendix X-B-4-4 of Annex X to this Agreement."

(cc) in requirement MIG_025 in subsection 5, "Article 34(7) of Regulation (EU) No 165/2014" is replaced by "Article 6(7) of Section 4 of Part B of Annex X to this Agreement";

PUBLIC

14. Appendix 16 (Adaptor for M1 and N1 category vehicles) of Annex I C to Implementing Regulation (EU) 2016/799 is further adapted as follows:

(dd) in point 5.1 in the table under Section (7) (Type approval of recording equipment when an adaptor is used), the reference to "Directive 2006/28/EC" is replaced by "UNECE Regulation No 10".

PUBLIC

PART C

REQUIREMENTS FOR VEHICLES USED FOR THE TRANSPORT OF GOODS IN ACCORDANCE WITH ARTICLE 281 OF THIS AGREEMENT

SECTION 1

WEIGHTS AND DIMENSIONS

ARTICLE 1

Subject matter and principles

The maximum weights and dimensions of the vehicles that may be used for journeys referred to in Articles 276(1) and 277 of this Agreement are those set out in Appendix X-C-1-1.

ARTICLE 2

Definitions

PUBLIC

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

(a) "motor vehicle" means any power-driven vehicle which travels on the road by its own means;

(b) "trailer" means any vehicle intended to be coupled to a motor vehicle excluding semitrailers, and constructed and equipped for the carriage of goods;

(c) "semi-trailer" means any vehicle intended to be coupled to a motor vehicle in such a way that part of it rests on the motor vehicle with a substantial part of its weight and of the weight of its load being borne by the motor vehicle, and constructed and equipped for the carriage of goods;

(d) "vehicle combination" means either:

– a road train consisting of a motor vehicle coupled to a trailer; or

– an articulated vehicle consisting of a motor vehicle coupled to a semi-trailer;

(e) "conditioned vehicle" means any vehicle whose fixed or movable superstructures are specially equipped for the carriage of goods at controlled temperatures and whose side walls, inclusive of insulation, are each at least 45 mm thick;

(f) "maximum authorised dimensions" means the maximum dimensions for use of a vehicle;

(g) "maximum authorised weight" means the maximum weight for use of a laden vehicle;

(h) "maximum authorised axle weight" means the maximum weight for use of a laden axle or group of axles;

(i) "tonne" means the weight executed by the mass of a tonne and shall correspond to 9,8 kilonewtons (kN);

(j) "indivisible load" means a load that cannot, for the purpose of carriage by road, be divided into two or more loads without undue expense or risk of damage and which owing to its dimensions or mass cannot be carried by a motor vehicle, trailer, road train or articulated vehicle complying with this Section in all respects;

(k) "alternative fuels" means fuels or power sources which serve, at least partly, as a substitute for fossil oil sources in the energy supply to transport and which have the potential to contribute to its decarbonisation and enhance the environmental performance of the transport sector, consisting of:

(i) electricity consumed in all types of electric vehicles;

(ii) hydrogen;

(iii) natural gas, including biomethane, in gaseous form (Compressed Natural Gas – CNG) and liquefied form (Liquefied Natural Gas – LNG);

PUBLIC

(iv) Liquefied Petroleum Gas (LPG);

(v) mechanical energy from on-board storage/on-board sources, including waste heat,

(l) "alternatively fuelled vehicle" means a motor vehicle powered wholly or in part by an alternative fuel;

(m) "zero-emission vehicle" means a heavy goods vehicle without an internal combustion engine, or with an internal combustion engine that emits less than 1 g CO_2/kWh; and

(n) "intermodal transport operation" means the transport of one or more containers or swap bodies, with a length of no more than 45 feet, where the lorry, trailer, semi-trailer (with or without tractor unit), swap body or container uses the road on the initial and/or final leg of the journey and, on the other leg, rail or inland waterway or maritime services.

ARTICLE 3

Special permits

A vehicle or vehicle combination which exceeds the maximum weights or dimensions set out in Appendix X-C-1-1 may only be allowed to circulate on the basis of a special permit issued without discrimination by the competent authorities, or on the basis of similar non-discriminatory arrangements agreed on a case-by-case basis with those authorities, where these vehicles or vehicle combinations carry or are intended to carry indivisible loads.

PUBLIC

ARTICLE 4

Local restrictions

This Section shall not preclude the non-discriminatory application of road traffic provisions in force in each Party which permit the weight and/or dimensions of vehicles on certain roads or civil engineering structures to be limited.

This includes the possibility to impose local restrictions on maximum authorised dimensions and/or weights of vehicles that may be used in specified areas or on specified roads, where the infrastructure is not suitable for long and heavy vehicles, such as city centres, small villages or places of special natural interest.

ARTICLE 5

Aerodynamic devices attached to the rear of vehicles or vehicle combinations

1. Vehicles or vehicle combinations equipped with aerodynamic devices may exceed the maximum lengths provided for in point 1.1 of Appendix X-C-1-1, to allow the addition of such devices to the rear of vehicles or vehicle combinations. Vehicles or vehicle combinations equipped with such devices shall comply with point 1.5 of Appendix X-C-1-1, and any exceeding of the maximum lengths shall not result in an increase in the loading length of those vehicles or vehicle combinations.

PUBLIC

2. The aerodynamic devices referred to in paragraph 1 shall fulfil the following operational conditions:

(a) in circumstances where the safety of other road users or of the driver is at risk, they shall be folded, retracted or removed by the driver;

(b) when aerodynamic devices and equipment exceed 500 mm in length in the in-use position they shall be retractable or foldable;

(c) their use on urban and inter urban road infrastructures shall take into account the special characteristics of areas where the speed limit is less than or equal to 50 km/h and where vulnerable road users are more likely to be present; and

(d) when retracted/folded, they shall not exceed the maximum authorised length by more than 20 cm.

ARTICLE 6

Aerodynamic cabins

Vehicles or vehicle combinations may exceed the maximum lengths laid down in point 1.1 of Appendix X-C-1-1 provided that their cabs deliver improved aerodynamic performance, energy efficiency and safety performance. Vehicles or vehicle combinations equipped with such cabs shall comply with point 1.5 of Appendix X-C-1-1 and any exceeding of the maximum lengths shall not result in an increase in the load capacity of those vehicles.

PUBLIC

ARTICLE 7

Intermodal transport operations

1. The maximum lengths laid down in point 1.1 of Appendix X-C-1-1, subject where applicable to Article 6, and the maximum distance laid down in point 1.6 of Appendix X-C-1-1, may be exceeded by 15 cm for vehicles or vehicle combinations engaged in the transport of 45-foot containers or 45-foot swap bodies, empty or loaded, provided that the road transport of the container or swap body in question is part of an intermodal transport operation carried out according to the conditions set by each Party.

2. For intermodal transport operations, the maximum authorised vehicle weight for articulate vehicles with five or six axles may be exceeded by two tonnes in the combination set out in point 2.2.2(a) of Appendix X-C-1-1 and by four tonnes in the combination set out in point 2.2.2(b) of Appendix X-C-1-1. The maximum authorised vehicle weight of these vehicles may not exceed 44 tonnes.

PUBLIC

ARTICLE 8

Proof of compliance

1. As proof of compliance with this Section, vehicles covered by it shall carry one of the following proofs:

(a) a combination of the following two plates:

– the manufacturer's statutory plate, which is a plate or label, affixed by the manufacturer on a vehicle that provides the main technical characteristics which are necessary for the identification of the vehicle and provides the competent authorities with the relevant information concerning the permissible maximum laden masses; and

– a plate relating to dimensions as far as possible affixed next to the manufacturer's statutory plate and containing the following information:

(i) name of the manufacturer;

(ii) vehicle identification number;

(iii) length of the motor vehicle, trailer or semi-trailer (L);

(iv) width of the motor vehicle, trailer or semi-trailer (W); and

PUBLIC

(v) data for the measurement of the length of vehicle combinations:

– the distance (a) between the front of the motor vehicle and the centre of the coupling device (coupling hook or fifth wheel); in the case of a fifth wheel with several coupling points, the minimum and maximum values must be given (a_{min} and a_{max});

– the distance (b) between the centre of the coupling device of the trailer (fifth wheel ring) or of the semi-trailer (king pin) and the rear of the trailer or of the semi-trailer; in the case of a device with several coupling points, the minimum and maximum values must be given (b_{min} and b_{max});

The length of vehicle combinations is the length of the motor vehicle and trailer or semi-trailer placed in a straight line behind each other.

(b) a single plate containing the information on the two plates referred to in point (a); or

(c) a single document issued by the competent authorities of a Party or, in the case of the Union, the Member State where the vehicle is registered or put into circulation containing the same information as the plates referred to in point (a). It shall be kept in a place easily accessible to inspection and shall be adequately protected.

2. If the characteristics of the vehicle no longer correspond to those indicated on the proof of compliance, the Party or, in the case of the Union, the Member State in which the vehicle is registered or put into circulation shall take the necessary steps to ensure that the proof of compliance is altered.

PUBLIC

3. The plates and documents referred to in paragraph 1 shall be recognised by the Parties as the proof of vehicle compliance provided for in this Section.

PUBLIC

ARTICLE 9

Enforcement

1. Each Party shall take specific measures to identify vehicles or vehicle combinations in circulation that are likely to have exceeded the maximum authorised weight and that shall therefore be checked by the competent authorities of the Parties in order to ensure compliance with the requirements of this Section. This can be done with the aid of automatic systems set up on the road infrastructure, or by means of on-board weighing equipment installed in vehicles. Such on-board weighing equipment shall be accurate and reliable, fully interoperable and compatible with all vehicle types.

2. A Party shall not require on-board weighing equipment to be installed on vehicles or vehicle combinations which are registered in the other Party.

3. Where automatic systems are used to establish infringements of this Section and to impose penalties, such automatic systems shall be certified. Where automatic systems are used only for identification purposes, they need not be certified.

4. The Parties shall, in accordance with Article 14 of Part A, ensure that their competent authorities exchange information about infringements and penalties relating to this Article.

PUBLIC

MAXIMUM WEIGHTS AND DIMENSIONS
AND RELATED CHARACTERISTICS OF VEHICLES

1. Maximum authorised dimensions for vehicles (in metre; "m")

1.1 Maximum length:

–	motor vehicle	12,00 m
–	trailer	12,00 m
–	articulated vehicle	16,50 m
–	road train	18,75 m

1.2 Maximum width:

(a)	all vehicles except the vehicles referred to in point (b)	2,55 m
(b)	superstructures of conditioned vehicles or conditioned containers or swap bodies transported by vehicles	2,60 m

1.3. Maximum height (any vehicle) 4,00 m

1.4. Removable superstructures and standardised freight items such as containers are included in the dimensions specified in points 1.1, 1.2, 1.3, 1.6, 1.7, 1.8 and 4.4

1.5. Any motor vehicle or vehicle combination which is in motion must be able to turn within a swept circle having an outer radius of 12,50 m and an inner radius of 5,30 m

1.6. Maximum distance between the axis of the fifth-wheel king pin and the rear of a semi-trailer 12,00 m

1.7. Maximum distance measured parallel to the longitudinal axis of the road train from the foremost external point of the loading area behind the cabin to the rearmost external point of the trailer of the combination, minus the distance between the rear of the drawing vehicle and the front of the trailer 15,65 m

1.8. Maximum distance measured parallel to the longitudinal axis of the road train from the foremost external point of the loading area behind the cabin to the rearmost external point of the trailer of the combination 16,40 m^2

2. Maximum authorised vehicle weight (in tonnes)

2.1 Vehicles forming part of a vehicle combination

2.1.1 Two-axle trailer 18 tonnes

2.1.2 Three-axle trailer 24 tonnes

PUBLIC

2.2 Vehicle combinations

In the case of vehicle combinations including alternatively fuelled or zero-emission vehicles, the maximum authorised weights provided for in this Section are increased by the additional weight of the alternative fuel or zero-emission technology with a maximum of 1 tonne and 2 tonnes respectively.

2.2.1 Road trains with five or six axles

(a)	two-axle motor vehicle with three-axle trailer	40 tonnes
(b)	three-axle motor vehicle with two or three-axle trailer	40 tonnes

2.2.2 Articulated vehicles with five or six axles

(a)	two-axle motor vehicle with three-axle semi-trailer	40 tonnes
(b)	three-axle motor vehicle with two or three-axle semi-trailer	40 tonnes

2.2.3. Road trains with four axles consisting of a two-axle motor vehicle and a two-axle trailer 36 tonnes

PUBLIC

2.2.4. Articulated vehicles with four axles consisting of a two-axle motor vehicle and a two-axle semi-trailer, if the distance between the axles of the semi-trailer:

– is 1,3 m or greater but not more than 1,8 m 36 tonnes

– is greater than 1,8 m 36 tonnes

(+ 2 tonnes margin when the maximum authorised weight (MAW) of the motor vehicle (18 tonnes) and the MAW of the tandem axle of the semi-trailer (20 tonnes) are respected and the driving axle is fitted with twin tyres and air suspension or equivalent suspension)

2.3 Motor vehicles

In the case of alternatively fuelled motor vehicles or zero-emission vehicles, the maximum authorised weights provided for in subsections 2.3.1 and 2.3.2 are increased by the additional weight of the alternative fuel or zero-emission technology with a maximum of 1 tonne and 2 tonnes respectively.

2.3.1. Two-axle motor vehicles 18 tonnes

2.3.2. Three-axle motor vehicles 25 tonnes (26 tonnes where the driving axle is fitted with twin tyres and air suspension or equivalent suspension, or where each driving axle is fitted with twin tyres and the maximum weight of each axle does not exceed 9,5 tonnes)

PUBLIC

2.3.3. Four-axle motor vehicles with two steering axles 32 tonnes where the driving axle is fitted with twin tyres and air suspension or equivalent suspension, or where each driving axle is fitted with twin tyres and the maximum weight of each axle does not exceed 9,5 tonnes

3. Maximum authorised axle weight of the vehicles (in tonnes)

3.1. Single axles

Single non-driving axle 10 tonnes

3.2. Tandem axles of trailers and semi-trailers.

The sum of the axle weights per tandem axle must not exceed, if the distance (d) between the axles is:

– less than 1 m ($d < 1,0$)	11 tonnes
– between 1,0 m and less than 1,3 m ($1,0 \leq d < 1,3$)	16 tonnes
– between 1,3 m and less than 1,8 m ($1,3 \leq d < 1,8$)	18 tonnes
– 1,8 m or more ($1,8 \leq d$)	20 tonnes

PUBLIC

3.3. Tri-axles of trailers and semi-trailers

The sum of the axle weights per tri-axle must not exceed, if the distance (d) between the axles is:

1,3 m or less ($d \leq 1,3$)	21 tonnes
over 1,3 m and up to 1,4 m ($1,3 < d \leq 1,4$)	24 tonnes

3.4. Driving axle

Driving axle of the vehicles referred to in points 2.2 and 2.3	11,5 tonnes

PUBLIC

3.5. Tandem axles of motor vehicles

The sum of the axle weights per tandem axle must not exceed, if the distance (d) between the axles is:

– less than 1 m (d < 1,0)	11,5 tonnes
– 1,0 m or greater but less than 1,3 m (1,0 ≤ d < 1,3)	16 tonnes
– 1,3 m or greater but less than 1,8 m (1,3 ≤ d < 1,8)	18 tonnes (19 tonnes where the driving axle is fitted with twin tyres and air suspension or equivalent suspension, or where each driving axle is fitted with twin tyres and where the maximum weight for each axle does not exceed 9,5 tonnes)

4. Other characteristics of the vehicles

4.1 All vehicles

The weight borne by the driving axle or driving axles of a vehicle or vehicle combination must not be less than 25 % of the total laden weight of the vehicle or vehicle combination.

PUBLIC

4.2. Road trains

The distance between the rear axle of a motor vehicle and the front axle of a trailer must not be less than 3,00 m.

4.3. Maximum authorised weight depending on the wheelbase

The maximum authorised weight in tonnes of a four-axle motor vehicle may not exceed five times the distance in metres between the axes of the foremost and rearmost axles of the vehicle.

4.4. Semi-trailers

The distance measured horizontally between the axis of the fifth-wheel king pin and any point at the front of the semi-trailer must not exceed 2,04 m.

PUBLIC

SECTION 2

REQUIREMENTS FOR TACHOGRAPHS,
DRIVERS' CARDS AND WORKSHOP CARDS

PUBLIC

ARTICLE 1

Subject-matter and principles

This Section lays down the requirements for vehicles within the scope of Section 2 of Part B of this Annex regarding the installation, testing, and control of tachographs, as referred to in Article 281(2) of this Agreement.

ARTICLE 2

Definitions

1. For the purposes of this Section, the definitions set out in Article 2 of Section 2 and in Article 2 of Section 4 of Part B of this Annex apply.

2. In addition to the definitions referred to in paragraph 1, for the purposes of this Section the following definitions apply:

(a) "vehicle unit" means the tachograph excluding the motion sensor and the cables connecting the motion sensor. The vehicle unit may be a single unit or several units distributed in the vehicle, provided that it complies with the security requirements of this Section; the vehicle unit includes, among other things, a processing unit, a data memory, a time measurement function, two smart card interface devices for driver and co-driver, a printer, a display, connectors and facilities for entering the user's inputs;

(b) "motion sensor" means a part of the tachograph providing a signal representative of vehicle speed and/or distance travelled;

(c) "control card" means a tachograph card issued by the authorities of a Party to a national competent control authority which identifies the control body and, optionally, the control officer, and which allows access to the data stored in the data memory or in the driver cards and, optionally, in the workshop cards for reading, printing and/or downloading;

(d) "workshop card" means a tachograph card issued by the authorities of a Party to designated staff of a tachograph manufacturer, a fitter, a vehicle manufacturer or a workshop, approved by that Party, which identifies the cardholder and allows for the testing, calibration and activation of tachographs, and/or downloading from them;

(e) "activation" means the phase in which the tachograph becomes fully operational and implements all functions, including security functions, through the use of a workshop card;

PUBLIC

(f) "calibration" means, with regard to the digital tachograph, updating or confirming vehicle parameters, including vehicle identification and vehicle characteristics, to be held in the data memory through the use of a workshop card;

(g) "downloading" from a digital or smart tachograph means the copying, together with the digital signature, of a part, or of a complete set, of data files recorded in the data memory of the vehicle unit or in the memory of a tachograph card, provided that this process does not alter or delete any stored data;

(h) "fault" means an abnormal operation detected by the digital tachograph which may result from an equipment malfunction or failure;

(i) "installation" means the mounting of a tachograph in a vehicle;

(j) "periodic inspection" means a set of operations performed to check that the tachograph works properly, that its settings correspond to the vehicle parameters, and that no manipulation devices are attached to the tachograph;

(k) "repair" means any repair of a motion sensor or of a vehicle unit that requires the disconnection of its power supply, or its disconnection from other tachograph components, or the opening of the motion sensor or vehicle unit;

(l) "interoperability" means the capacity of systems and the underlying business processes to exchange data and to share information;

(m) "interface" means a facility between systems which provides the media through which they can connect and interact;

PUBLIC

(n) "time measurement" means a permanent digital record of the coordinated universal date and time (UTC); and

(o) "TACHOnet messaging system" means the messaging system complying with the technical specifications laid down in Annexes I to VII of Commission Implementing Regulation (EU) 2016/68[1].

PUBLIC

ARTICLE 3

Installation

1. Tachographs as referred to in paragraph 2 shall be installed in vehicles:

(a) where the maximum permissible mass of the vehicle, including any trailer, or semitrailer, exceeds 3,5 tonnes; or

(b) from 1 July 2026, where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 2,5 tonnes.

2. The tachographs are:

(a) for vehicles put into service for the first time before 1 May 2006, an analogue tachograph;

[1] Commission Implementing Regulation (EU) 2016/68 of 21 January 2016 on common procedures and specifications necessary for the interconnection of electronic registers of driver cards (OJ EU L 15, 22.1.2016, p. 51, ELI: http://data.europa.eu/eli/reg_impl/2016/68/oj).

(b) for vehicles put into service for the first time between 1 May 2006 and 30 September 2011, the first version of the digital tachograph;

(c) for vehicles put into service for the first time between 1 October 2011 and 30 September 2012, the second version of the digital tachograph;

(d) for vehicles put into service for the first time between 1 October 2012 and 14 June 2019, the third version of the digital tachograph;

(e) for vehicles registered for the first time from 15 June 2019 and until 2 years after the entry into force of the detailed specifications referred to in Article 2(2)(g) of Section 4 of Part B, a smart tachograph 1; and

(f) for vehicles registered for the first time more than 2 years after the entry into force of the detailed specifications referred to in Article 2(2)(h) of Section 4 of Part B, a smart tachograph 2.

3. Each Party may exempt from the application of this Section the vehicles mentioned in Article 8(3) of Section 2 of Part B of this Annex.

4. Each Party may exempt from the application of this Section vehicles used for transport operations which have been granted an exception in accordance with Article 8(4) of Section 2 of Part B of this Annex. Each Party shall immediately notify each other when making use of this paragraph.

PUBLIC

5. No later than three years from the end of the year of entry into force of the detailed technical specifications of the smart tachograph 2, vehicles mentioned in point (a) of paragraph 1 which are equipped with an analogue tachograph or a digital tachograph shall be fitted with a smart tachograph 2 when operating on the territory of a Party other than the one where they are registered.

6. No later than four years after the entry into force of the detailed technical specifications of the smart tachograph 2, vehicles mentioned in point (a) of paragraph 1 equipped with a smart tachograph 1, shall be equipped with a smart tachograph 2 when operating on the territory of a Party other than the one where they are registered.

7. From 1 July 2026, vehicles mentioned in point (b) of paragraph 1 shall be equipped with a smart tachograph 2 when operating on the territory of a Party other than the one where they are registered.

8. Nothing in this Section shall affect the application on the Union territory of the Union rules on recording equipment in road transport to Union road haulage operators.

ARTICLE 4

Data protection

1. Each Party shall ensure that the processing of personal data in the context of this Section is carried out solely for the purpose of verifying compliance with this Section.

PUBLIC

2. Each Party shall, in particular, ensure that personal data are protected against uses other than the one strictly referred to in paragraph 1 in relation to:

(a) the use of a global navigation satellite system (GNSS) for the recording of location data as referred to in the technical specification for smart tachograph 1 and smart tachograph 2;

(b) the electronic exchange of information on driver cards as referred to in Article 13, and in particular any cross-border exchanges of such data with third Parties; and

(c) the keeping of records by road haulage operators as referred to in Article 15.

3. Digital tachographs shall be designed in such a way as to ensure privacy. Only data necessary for the purposes referred to in paragraph 1 shall be processed.

4. Owners of vehicles, road haulage operators and any other entity concerned shall comply with the relevant provisions on the protection of personal data.

ARTICLE 5

Installation and repair

1. Tachographs may be installed or repaired only by fitters, workshops or vehicle manufacturers approved by the competent authorities in a Party for that purpose in accordance with Article 7.

PUBLIC

2. Approved fitters, workshops or vehicle manufacturers shall seal the tachograph after having verified that it is functioning properly, and, in particular, in such a way as to ensure that no manipulation device can tamper with or alter the data recorded.

3. The approved fitter, workshop or vehicle manufacturer shall place a special mark on the seals which it affixes and, in addition, for digital, smart 1 and smart 2 tachographs, shall enter the electronic security data for carrying out authentication checks. Each Party shall keep and publish a register of the marks and electronic security data used and the necessary information related to the electronic security data used.

4. For the purpose of certifying that the installation of the tachograph took place in accordance with the requirements of this Section, an installation plaque shall be affixed in such a way as to be clearly visible and easily accessible.

5. Tachograph components shall be sealed. Any connections to the tachograph which are potentially vulnerable to tampering, including the connection between the motion sensor and the gearbox, and the installation plaque where relevant, shall be sealed.

A seal shall be removed or broken only:

– by fitters or workshops approved by the competent authorities under Article 7 for repair, maintenance or recalibration purposes of the tachograph, or by control officers properly trained and, where required authorised, for control purposes; or

– for the purpose of vehicle repair or modification which affects the seal. In such cases, a written statement stating the date and time at which the seal was broken and giving the reasons for the seal removal shall be kept on board the vehicle.

PUBLIC

The removed or broken seals shall be replaced by an approved fitter or a workshop without undue delay and at the latest within seven days of their removal or breaking. When the seals have been removed or broken for control purposes, they may be replaced by a control officer equipped with sealing equipment and a unique special mark without undue delay.

When a control officer removes a seal, the control card shall be inserted in the tachograph from the moment of the removal of the seal until the inspection is finished, including in the case of the placement of a new seal. The control officer shall issue a written statement containing at least the following information:

– vehicle identification number;

– name of the officer;

– control authority and country;

– number of the control card;

– number of the removed seal;

– date and time of seal removal; and

– number of the new seal, where the control officer has placed a new seal.

Before replacing the seals, a check and calibration of the tachograph shall be performed by an approved workshop, except where a seal has been removed or broken for control purposes and replaced by a control officer.

PUBLIC

ARTICLE 6

Inspections of tachographs

1. Tachographs shall be subject to regular inspection by approved workshops. Regular inspections shall be carried out at least every two years.

2. The inspections referred to in paragraph 1 shall check at least the following:

– the tachograph is correctly fitted and appropriate for the vehicle;

– the tachograph is working properly;

– the tachograph carries the type-approval mark;

– the installation plaque is affixed;

– all seals are intact and effective;

– there are no manipulation devices attached to the tachograph or traces of the use of such devices; and

– the tyre size and the actual circumference of the tyres.

3. Workshops shall draw up an inspection report in cases where irregularities in the functioning of the tachograph had to be remedied, whether as a result of a periodic inspection or of an inspection carried out at the specific request of the national competent authority. They shall keep a list of all inspection reports drawn up.

PUBLIC

4. Inspection reports shall be retained for a minimum period of two years from the time the report was made. Each Party shall decide whether inspection reports are to be retained or sent to the competent authority during that period. In cases where the inspection reports are kept by the workshop, upon request from the competent authority, the workshop shall make available the reports of inspections and calibrations carried out during that period.

PUBLIC

ARTICLE 7

Approval of fitters, workshops and vehicle manufacturers

1. Each Party or, in the case of the Union, each Member State shall approve, regularly control and certify the fitters, workshops and vehicle manufacturers which may carry out installations, checks, inspections and repairs of tachographs.

2. Each Party or, in the case of the Union, each Member State shall ensure that fitters, workshops and vehicle manufacturers are competent and reliable. For that purpose, they shall establish and publish a set of clear national procedures and shall ensure that the following minimum criteria are met:

(a) the staff are properly trained;

(b) the equipment necessary to carry out the relevant tests and tasks is available; and

(c) the fitters, workshops and vehicle manufacturers are of good repute.

3. Audits of approved fitters or workshops shall be carried out as follows:

(a) approved fitters or workshops shall be subject, at least every two years, to an audit of the procedures they apply when handling tachographs. The audit shall focus in particular on the security measures taken and the handling of workshop cards. Parties or, in the case of the Union, Member States may carry out these audits without conducting a site visit; and

(b) unannounced technical audits of approved fitters or workshops shall also take place in order to check the calibrations, inspections and installations carried out. Those audits shall cover at least 10 % of the approved fitters and workshops annually.

4. Each Party and their competent authorities shall take appropriate measures to prevent conflicts of interests between fitters or workshops and road haulage operators. In particular, where there is a serious risk of a conflict of interests, additional specific measures shall be taken to ensure that the fitter or workshop complies with this Section.

5. The competent authorities of each Party shall withdraw approvals, either temporarily or permanently, from fitters, workshops and vehicle manufacturers which fail to meet their obligations under this Section.

PUBLIC

ARTICLE 8

Workshop cards

1. The period of validity of workshop cards shall not exceed one year. When renewing the workshop card, the competent authority shall ensure that the criteria listed in Article 7(2) are met by the fitter, workshop or vehicle manufacturer.

2. The competent authority shall renew a workshop card within 15 working days after receipt of a valid renewal request and all the necessary documentation. If a workshop card is damaged, malfunctions, or is lost or stolen, the competent authority shall supply a replacement card within five working days of receiving a detailed request to that effect. Competent authorities shall maintain a register of lost, stolen or defective cards.

3. If a Party or, in the case of the Union, a Member State withdraws the approval of a fitter, workshop or vehicle manufacturer as provided for in Article 7, it shall also withdraw the workshop cards issued thereto.

4. Each Party shall take all necessary measures to prevent the workshop cards distributed to approved fitters, workshops and vehicle manufacturers from being falsified.

PUBLIC

ARTICLE 9

Issuing of driver cards

1. Driver cards shall be issued, at the request of the driver, by the competent authority in a Party where the driver has his normal residence. Where the competent authorities in a Party issuing the driver card have doubts as to the validity of a statement as to normal residence, or for the purpose of certain specific controls, they may request any additional information or evidence from the driver.

For the purposes of this Article, "normal residence" means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a place different from their personal ties and who consequently lives in turn in different places situated in the two Parties shall be regarded as being the place of their personal ties, provided that such person returns there regularly. This last condition need not be complied with where the person is living in a Party in order to carry out a fixed-term assignment.

2. In duly justified and exceptional cases, each Party or, in the case of the Union, a Member State may issue a temporary and non-renewable driver card valid for a maximum period of 185 days to a driver who does not have his normal residence in a Party, provided that such driver is in a labour law relationship with an undertaking established in the issuing Party and, in so far, presents a driver attestation when required.

PUBLIC

3. The competent authorities of the issuing Party shall take appropriate measures to ensure that an applicant does not already hold a valid driver card and shall personalise the driver card, ensuring that its data are visible and secure.

4. The driver card shall not be valid for more than five years.

5. A valid driver card shall not be withdrawn or suspended unless the competent authorities of a Party find that the card has been falsified, or the driver is using a card of which he is not the holder, or the card held has been obtained on the basis of false declarations and/or forged documents. If such suspension or withdrawal measures are taken by a Party or, in the case of the Union, a Member State other than the issuing Party or, in the case of the Union, other than the issuing Member State, the former shall return the card to the authorities of the Party or, in the case of the Union, the authorities of the Member State which issued it, as soon as possible, indicating the reasons for the withdrawal or suspension. If the return of the card is expected to take longer than two weeks, the suspending or withdrawing Party or, in the case of the Union, the suspending or withdrawing Member State shall inform the issuing Party or, in the case of the Union, the issuing Member State within those two weeks of the reasons for suspension or withdrawal.

6. The competent authority of the issuing Party may require a driver to replace the driver card by a new one if this is necessary to comply with the relevant technical specifications.

7. Each Party shall take all necessary measures to prevent driver cards from being falsified.

PUBLIC

8. This Article shall not prevent a Party or, in the case of the Union, a Member State from issuing a driver card to a driver who has his normal residence in a part of that Party's territory, to which this Annex does not apply, provided that the relevant provisions of this Section are applied in such cases.

PUBLIC

ARTICLE 10

Renewal of driver cards

1. Where, in the case of renewals, the Party of the driver's normal residence is different from that which issued his current card, and where the authorities of the former Party are requested to renew the driver card, they shall inform the authorities which issued the earlier card of the reasons for its renewal.

2. In the event of a request for the renewal of a card which is imminently about to expire, the competent authority shall supply a new card before the expiry date, provided that the request was sent within the time-limits laid down in Article 5 of Section 4 of Part B.

ARTICLE 11

Stolen, lost or defective driver cards

1. Issuing authorities shall keep records of issued, stolen, lost or defective driver cards for a period at least equivalent to their period of validity.

2. If the driver card is damaged, malfunctions or is lost or stolen, the competent authorities in the Party of his normal residence shall supply a replacement card within eight working days after their receipt of a detailed request to that effect.

PUBLIC

ARTICLE 12

Mutual acceptance of driver cards

1. Each Party shall accept the driver cards issued by the other Party.

2. Where the holder of a valid driver card issued by a Party has established his normal residence in the other Party and has asked for his card to be exchanged for an equivalent driver card, it shall be the responsibility of the Party or, in the case of the Union, the Member State which carries out the exchange to verify whether the card produced is still valid.

3. Parties or, in the case of the Union, Member States carrying out an exchange shall return the old card to the authorities of the issuing Party or, in the case of the Union, the issuing Member State and indicate the reasons for so doing.

4. Where a Party or, in the case of the Union, a Member State replaces or exchanges a driver card, the replacement or exchange, and any subsequent replacement or exchange, shall be registered in that Party or, in the case of the Union, in that Member State.

ARTICLE 13

Electronic exchange of information on driver cards

1. In order to ensure that an applicant does not already hold a valid driver card, Parties or, in the case of the Union, Member States shall maintain national electronic registers containing the following information on driver cards for a period at least equivalent to the period of validity of those cards:

– surname and first name of the driver;

– birth date and, if available, place of birth of the driver;

– valid driving licence number and country of issue of the driving licence (if applicable);

– status of the driver card; and

– driver card number.

2. The electronic registers of the Parties or, in the case of the Union, the Member States shall be interconnected and accessible throughout the territory of the Parties, using the TACHOnet messaging system or a compatible system. In the case of the use of a compatible system, the exchange of electronic data with the other Party shall be possible through the TACHOnet messaging system.

PUBLIC

3. When issuing, replacing and, where necessary, renewing a driver card, Parties or, in the case of the Union, Member States shall verify through electronic data exchange that the driver does not already hold another valid driver card. The data exchanged shall be limited to the data necessary for the purpose of this verification.

4. Control officers may have access to the electronic register in order to check the status of a driver card.

PUBLIC

ARTICLE 14

Settings of tachographs

1. Digital tachographs shall not be set in such a way that they automatically switch to a specific category of activity when the vehicle's engine or ignition is switched off, unless the driver remains able to choose manually the appropriate category of activity.

2. Vehicles shall not be fitted with more than one tachograph, except for the purposes of field tests.

3. Each Party shall forbid the production, distribution, advertising and/or selling of devices constructed and/or intended for the manipulation of tachographs.

ARTICLE 15

Responsibility of road haulage operators

1. Road haulage operators shall be responsible for ensuring that their drivers are properly trained and instructed as regards the correct functioning of tachographs, whether digital, smart or analogue, shall make regular checks to ensure that their drivers make correct use thereof, and shall not give to their drivers any direct or indirect incentives that could encourage the misuse of tachographs.

Road haulage operators shall issue a sufficient number of record sheets to drivers of vehicles fitted with analogue tachographs, taking into account the fact that record sheets are personal in character, the length of the period of service and the possible need to replace record sheets which are damaged or have been taken by an authorised control officer. Road haulage operators shall issue to drivers only record sheets of an approved model suitable for use in the equipment installed in the vehicle.

The road haulage operator shall ensure that, taking into account the length of the period of service, the printing of data from the tachograph at the request of a control officer can be carried out correctly in the event of an inspection.

2. Road haulage operators shall keep record sheets and printouts, whenever printouts have been made to comply with Article 9 of Section 4 of Part B of this Annex, in chronological order and in a legible form, for at least a year after their use, and shall give copies to the drivers concerned who request them. Road haulage operators shall also give copies of data downloaded from driver cards to the drivers concerned who request them, together with printed paper versions of those copies. Record sheets, printouts and downloaded data shall be produced or handed over at the request of any authorised control officer.

PUBLIC

3. Road haulage operators shall be liable for infringements of this Section and of Section 4 of Part B of this Annex committed by their drivers or by drivers at their disposal. However, each Party may make such liability conditional on the road haulage operator's infringement of the first subparagraph of paragraph 1 of this Article and Article 7(1) and (2) of Section 2 of Part B of this Annex.

PUBLIC

ARTICLE 16

Procedures for road haulage operators in the event of malfunctioning equipment

1. In the event of the breakdown or faulty operation of a tachograph, the road haulage operator shall have it repaired by an approved fitter or workshop, as soon as circumstances permit.

2. If the vehicle is unable to return to the road haulage operator's premises within a period of one week calculated from the day of the breakdown or of the discovery of defective operation, the repair shall be carried out en route.

3. Each Party or, in the case of the Union, the Member States shall give the competent authorities power to prohibit the use of the vehicle in cases where the breakdown or faulty operation has not been remedied as provided in paragraphs 1 and 2 in so far as this is in accordance with the national legislation in the Party concerned.

ARTICLE 17

Procedure for the issuing of tachograph cards

The European Commission shall provide to the competent authorities of the United Kingdom, in respect of Gibraltar, the cryptographic material for the issuing of tachograph cards for drivers, workshops and control authorities, in accordance with the European Root Certification Authority (ERCA) certificate policy and the certificate policy of the United Kingdom, in respect of Gibraltar.

PUBLIC

ANNEX 28

PUBLIC

TERMS AND CONDITIONS OF EMPLOYMENT
AS REFERRED TO IN ARTICLE 295

(a) maximum work periods and minimum rest periods;

(b) minimum paid annual leave;

(c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

(e) health, safety and hygiene at work;

(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

(g) equality of treatment between men and women and other provisions on non-discrimination;

(h) the conditions of workers' accommodation where provided by the employer to workers away from their regular place of work;

(i) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

Point (i) shall apply exclusively to travel, board and lodging expenditure incurred by posted workers where they are required to travel to and from their regular place of work in the territory where they are posted, or where they are temporarily sent by their employer from that regular place of work to another place of work.

PUBLIC

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RULES OF PROCEDURE FOR DISPUTE SETTLEMENT

I. Definitions

1. For the purposes of Part Six (Dispute settlement) of this Agreement and of these Rules of Procedure, the following definitions apply:

(a) "administrative staff", in respect of an arbitrator, means individuals under the direction and control of an arbitrator, other than assistants;

(b) "adviser" means an individual retained by a Party to advise or assist that Party in connection with the arbitration proceedings;

(c) "arbitration tribunal" means a tribunal established under Article DS.7 (Establishment of an arbitration tribunal) of Part Six (Dispute Settlement);

(d) "arbitrator" means a member of the arbitration tribunal;

(e) "assistant" means an individual who, under the terms of appointment and under the direction and control of an arbitrator, conducts research or provides assistance to that arbitrator;

(f) "complaining Party" means any Party that requests the establishment of an arbitration tribunal under Article 306 (Establishment of an arbitration tribunal);

(g) "registry" means an external body with relevant expertise appointed by the Parties to provide administrative support for the proceedings;

(h) "respondent Party" means the Party that is alleged to be in violation of the covered provisions; and

(i) "representative of a Party" means an employee or any individual appointed by a government department, agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement or any supplementing agreement.

II. Notifications

2. Any request, notice, written submission or other document (hereinafter referred to as "notification") of:

(a) the arbitration tribunal shall be sent to both Parties at the same time;

(b) a Party, which is addressed to the arbitration tribunal, shall be copied to the other Party at the same time; and

(c) a Party, which is addressed to the other Party, shall be copied to the arbitration tribunal at the same time, as appropriate.

PUBLIC

3. Any notification shall be made by e-mail or, where appropriate, any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, such notification shall be deemed to be delivered on the date of its sending.

4. All notifications shall be addressed to the Legal Service of the European Commission and to the Legal Adviser of the Foreign, Commonwealth & Development Office of the United Kingdom, respectively.

5. Minor errors of a clerical nature in a request, notice, written submission or other document related to the arbitration tribunal proceedings may be corrected by the delivery of a new document clearly indicating the changes.

6. If the last day for the delivery of a document falls on a non-working day of the institutions of the European Union or of the government of the United Kingdom or of Gibraltar, the time period for the delivery of the document shall end on the first following working day.

III. Appointment of arbitrators

7. If an arbitrator is selected by lot, pursuant to Article 306 (Establishment of an arbitration tribunal)of Part Six (Dispute Settlement), the co-chair of the Cooperation Council of the complaining Party shall promptly inform the co-chair of the respondent Party of the date, time and venue of the lot. The respondent Party may, if it so chooses, be present during the lot. In any event, the lot shall be carried out with the Party or Parties that are present.

PUBLIC

8. The co-chair of the complaining Party shall notify, in writing, each individual who has been selected to serve as an arbitrator of their selection. Each individual shall confirm their availability to both Parties within five days after the date of delivery of the notification.

9. For the purposes of Article 306 (Establishment of an arbitration tribunal), the co-chair of the Cooperation Council of the complaining Party shall select by lot:

   (a) an arbitrator from the individuals who have been formally proposed by a Party as arbitrators for its sub-list pursuant to points (a) or (b) of Article 319 (List of arbitrators), as applicable, or, in the absence of those, from the individuals who have been formally proposed by the other Party for that Party's sub-list; and

   (b) a chairperson from the individuals who have been formally proposed by one or both Parties for the sub-list of chairpersons pursuant to point (c) of Article 319 (List of arbitrators).

10. The Parties may appoint a registry to assist in the organisation and conduct of specific dispute settlement proceedings on the basis of ad-hoc arrangements or on the basis of arrangements adopted by the Cooperation Council pursuant to Article 326 (Annexes).

11. The arbitrators shall accept their appointment by signing the appointment contracts. The Parties shall endeavour to ensure that, at the latest by the time all the selected arbitrators have confirmed their availability, they have agreed on the remuneration and the reimbursement of expenses of the arbitrators and assistants, and have prepared the necessary appointment contracts, with a view to having them signed promptly. The remuneration and expenses of the arbitrators shall be based on WTO standards. The remuneration and expenses of an assistant or assistants of an arbitrator shall not exceed 50 % of the remuneration of that arbitrator.

PUBLIC

IV. Organisational meeting

12. Unless the Parties agree otherwise, they shall meet the arbitration tribunal within seven days after its establishment in order to determine such matters as the Parties or the arbitration tribunal deem appropriate, including the timetable of the arbitration procedure. Arbitrators and representatives of the Parties may take part in this meeting through any means, including telephone or video-conference.

V. Written submissions

13. The complaining Party shall deliver its written submission no later than 30 days after the date of establishment of the arbitration tribunal. The respondent Party shall deliver its written submission no later than 30 days after the date of delivery of the written submission of the complaining Party.

VI. Operation of the arbitration tribunal

14. The chairperson of the arbitration tribunal shall preside all its meetings. The arbitration tribunal may delegate to the chairperson the authority to make administrative and procedural decisions.

15. Unless otherwise provided in Part Six (Dispute Settlement) or in these Rules of Procedure, the arbitration tribunal may conduct its activities through any means, including telephone, video-conference or other electronic means of communication.

16. Only arbitrators may take part in the deliberations of the arbitration tribunal, but the arbitration tribunal may permit their assistants to be present at its deliberations.

PUBLIC

17. The drafting of any decision and report shall remain the exclusive responsibility of the arbitration tribunal and shall not be delegated.

18. Where a procedural question arises that is not covered by Part Six (Dispute Settlement)or its Annexes, the arbitration tribunal, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions.

19. When the arbitration tribunal considers that there is a need to modify any of the time periods for the arbitration procedure other than the time periods set out in Part Six (Dispute Settlement) or to make any other procedural or administrative adjustment, it shall inform the Parties, in writing and after consultations of the Parties, of the reasons for the change or adjustment and of the time period or adjustment needed.

VII. Replacement

20. When a Party considers that an arbitrator does not comply with the requirements of Annex 30 (Code of Conduct for Arbitrators) and for this reason should be replaced, that Party shall notify the other Party within 15 days after the date on which it obtained sufficient evidence of the arbitrator's alleged non-compliance.

21. The Parties shall consult within 15 days after the date of the notification referred to in Rule 20. They shall inform the arbitrator of the alleged non-compliance and may request the arbitrator to take steps to remedy it. They may also, if they agree, remove the arbitrator and select a new arbitrator in accordance with Article 306 (Establishment of an arbitration tribunal).

PUBLIC

22. If the Parties fail to agree on the need to replace an arbitrator other than the chairperson of the arbitration tribunal, either Party may request that this matter be referred to the chairperson of the arbitration tribunal, whose decision shall be final.

If the chairperson of the arbitration tribunal finds that the arbitrator does not comply with the requirements of Annex 30 (Code of Conduct for Arbitrators), the new arbitrator shall be selected in accordance with Article 306 (Establishment of an arbitration tribunal).

23. If the Parties fail to agree on the need to replace the chairperson, either Party may request that this matter be referred to one of the other individuals on the sub-list of chairpersons established pursuant to Article 319 (List of arbitrators). Their name shall be drawn by lot by the co-chair of the Cooperation Council from the requesting Party, or the chair's delegate. The decision by the selected person on the need to replace the chairperson shall be final.

If this person finds that the chairperson does not comply with the requirements of Annex 30 (Code of Conduct for Arbitrators), the chairperson shall be selected in accordance with Article 306 (Establishment of an arbitration tribunal).

VIII. Hearings

24. On the basis of the timetable determined pursuant to Rule 12, after consulting with the Parties and the other arbitrators, the chairperson of the arbitration tribunal shall notify to the Parties the date, time and venue of the hearing. That information shall be made publicly available by the Party in which the hearing takes place, unless the hearing is closed to the public.

PUBLIC

25. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is the United Kingdom and in London if the complaining Party is the European Union. The respondent Party shall be in charge of the logistical administration of the hearing and bear the expenses derived therefrom.

26. The arbitration tribunal may convene additional hearings if the Parties so agree.

27. All arbitrators shall be present during the entirety of the hearing.

28. Unless the Parties agree otherwise, the following persons may attend the hearing, irrespective of whether the hearing is open to the public or not:

    (a) representatives of a Party;

    (b) advisers;

    (c) assistants and administrative staff;

    (d) interpreters, translators and court reporters of the arbitration tribunal; and

    (e) experts, as decided by the arbitration tribunal pursuant to Article DS.19 (Receipt of information).

29. No later than five days before the date of a hearing, each Party shall deliver to the arbitration tribunal and to the other Party a list of names of the persons who will make oral arguments or presentations in the hearing on behalf of that Party and of other representatives and advisers who will be attending the hearing.

PUBLIC

30. The arbitration tribunal shall conduct the hearing in the following manner, ensuring that the Parties are afforded equal time in both argument and rebuttal argument:

(a) Argument

(i) argument of the complaining Party; and

(ii) argument of the respondent Party.

(b) Rebuttal Argument

(i) reply of the complaining Party; and

(ii) counter-reply of the respondent Party.

31. The arbitration tribunal may direct questions to either Party at any time during the hearing.

32. The arbitration tribunal shall arrange for a recording of the hearing to be delivered to the Parties as soon as possible after the hearing.

33. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 days after the date of the hearing.

IX. Questions in writing

34. The arbitration tribunal may at any time during the proceedings submit questions in writing to one or both Parties. Any questions submitted to one Party shall be copied to the other Party.

PUBLIC

35. Each Party shall provide the other Party with a copy of its response to the questions submitted by the arbitration tribunal. The other Party shall have an opportunity to provide comments in writing on that response within five days after the delivery of such copy.

X. Confidentiality

36. Each Party and the arbitration tribunal shall treat as confidential any information submitted by the other Party to the arbitration tribunal that the other Party has designated as confidential. When a Party submits to the arbitration tribunal a written submission which contains confidential information, it shall also provide, within 15 days, a submission without the confidential information, which shall be disclosed to the public.

37. Nothing in these Rules of Procedure shall preclude a Party from disclosing statements of its own positions to the public to the extent that, when making reference to information submitted by the other Party, it does not disclose any information designated by the other Party as confidential.

38. The arbitration tribunal shall hold the relevant parts of the session in private when the submission and arguments of a Party contains confidential information. The Parties shall maintain the confidentiality of the arbitration tribunal hearings when the hearings are held in closed session.

XI. *Ex parte* contacts

39 The arbitration tribunal shall not meet or communicate with a Party in the absence of the other Party.

PUBLIC

40. An arbitrator shall not discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

41. A Party shall not have any contact with an arbitrator. Any contact between a Party and a person who is under consideration for selection as an arbitrator shall be limited to issues relating to that person's availability and the appointment contract.

XII. *Amicus curiae* submissions

42. Unless the Parties agree otherwise within five days after the date of establishment of the arbitration tribunal, the arbitration tribunal may receive unsolicited written submissions from natural persons of a Party or legal persons established in the territory of a Party that are independent from the governments of the Parties, (hereinafter referred to as "*amicus curiae* submissions"), provided that they:

(a) are received by the arbitration tribunal within 10 days of the date of the establishment of the arbitration tribunal;

(b) are concise and in no case longer than 15 pages, including any Annexes, typed at double space;

(c) are directly relevant to a factual or a legal issue under consideration by the arbitration tribunal;

(d) contain a description of the person making the submission, including for a natural person their nationality and for a legal person its place of establishment, the nature of its activities, its legal status, general objectives, its source of financing and any controlling entity;

PUBLIC

(f) specify the nature of the interest that the person has in the arbitration proceedings; and

(g) are drafted in the working language determined in accordance with Rules 46 or 47 of these Rules of Procedure.

43. The amicus curiae submissions shall be delivered to the Parties for comments. The Parties may submit comments, within 10 days after the date of their delivery to the Parties, to the arbitration tribunal.

44. The arbitration tribunal shall list in its report all the amicus curiae submissions it has received pursuant to Rule 42. The arbitration tribunal shall not be obliged to address in its report the arguments made in those submissions. If the arbitration tribunal addresses arguments made therein, it shall also take into account any comments made by the Parties pursuant to Rule 43.

XIII. Urgent cases

45. In cases of urgency as referred to in Article 310 (Urgent proceedings), the arbitration tribunal, after consulting the Parties, shall adjust, as appropriate, the time periods set out in these Rules of Procedure. The arbitration tribunal shall notify the Parties of those adjustments.

XIV. Working language and translation

46. The language of proceedings before the arbitration tribunal shall be English.

47. Reports and decisions of the arbitration tribunal shall be issued in English.

PUBLIC

48. If a Party submits a document in a language that is not English, it shall at the same time submit a translation thereof at its own costs.

XV. Other procedures

49. The time periods laid down in these Rules of Procedure shall be adjusted in line with the special time periods provided for the delivery of a ruling, report or decision by the arbitration tribunal pursuant to Article 314 (Reasonable period of time), Article 315 (Compliance review), Article 316 (Temporary remedies) and Article 317 (Review of any measure taken to comply after the adoption of temporary measures) of Part Six (Dispute Settlement).

PUBLIC

ANNEX 30

PUBLIC

CODE OF CONDUCT FOR ARBITRATORS

I. Definitions

1. In this Code of Conduct:

(a) "arbitrator" means a member of an arbitration tribunal;

(b) the definition of "assistant" set out in the Rules of Procedure (Annex 29) shall apply; and

(c) "candidate" means an individual who is under consideration for selection as an arbitrator pursuant to 306 (Establishment of an arbitration tribunal) or Article 319 (List of arbitrators)of Part Six (Dispute Settlement).

II. Governing principles

2. In order to preserve the integrity and impartiality of the dispute settlement mechanism candidates and arbitrators shall:

(a) get acquainted with this Code of Conduct;

(b) be independent and impartial;

(c) avoid direct or indirect conflicts of interests;

(d) avoid impropriety or bias and the appearance of impropriety or bias;

(e) observe high standards of conduct;

(f) not take instructions from any organisation or government with regard to dispute settlement under this Agreement or any supplementing agreement; and

(g) not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.

3. Arbitrators shall not directly, or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of their duties.

4. Arbitrators shall not use their position on the arbitration tribunal to advance any personal or private interests. Arbitrators shall avoid actions that may create the impression that others are in a special position to influence them.

5. Arbitrators shall not allow past or present financial, business, professional, family or social relationships or responsibilities to influence their conduct or judgement.

6. Arbitrators shall avoid entering into any relationship or acquiring any financial interest that is likely to affect their impartiality or that might reasonably create an appearance of impropriety or bias.

PUBLIC

III. Disclosure obligations

7. Prior to the acceptance of their appointment as arbitrators pursuant to Article 306 (Establishment of an arbitration tribunal) of Part Six of this Agreement (Dispute Settlement), candidates requested to serve as arbitrators shall receive a copy of this Code of Conduct and disclose to the Parties in writing any past or present interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an appearance of impropriety or bias. To that end, candidates shall make all reasonable efforts to become aware of any such interest, relationship or matter.

8. The disclosure obligation is a continuing duty which requires arbitrators to make at all times reasonable efforts to become aware of any interest, relationship or matter referred to in paragraph 7 that may arise during any stage of the proceedings, and to disclose it to the Parties in writing at the earliest time they become aware of it.

9. Candidates and arbitrators shall communicate any matter concerning actual or potential violations of this Code of Conduct to the Parties for their consideration.

IV. Duties of arbitrators

10. Upon acceptance of their appointment, arbitrators shall be available to perform and shall perform their duties thoroughly, expeditiously and with fairness and diligence throughout the proceedings.

11. Arbitrators shall consider only the issues raised in the proceedings and necessary for a decision or report. They shall not delegate this duty to any other person.

PUBLIC

12. Assistants shall comply with the obligations set out for arbitrators in Parts II (Governing principles), III (Disclosure obligations) and VII (Confidentiality), *mutatis mutandis*. Arbitrators shall take all appropriate steps to ensure that their assistants are aware of, and comply with, those obligations.

V. Duties of potential candidates

13. Individuals included on the list established pursuant to Article 306 (Establishment of an arbitration tribunal) or Article 319 (List of arbitrators) of Part Six (Dispute Settlement) shall observe high standards of conduct and avoid impropriety or the appearance thereof. Individuals included on that list, or considered for inclusion, shall communicate to the Parties without delay any matter that may warrant consideration in this respect.

VI. Obligations of former arbitrators

14. Former arbitrators shall avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from any decision or ruling of the arbitration tribunal.

15. Former arbitrators shall comply with the obligations in Part VII (Confidentiality) of this Code of Conduct.

VII. Confidentiality

16. Arbitrators shall not disclose or use, at any time, any non-public information concerning the proceedings or acquired during the proceedings for which they have been appointed, except for the purposes of those proceedings. In particular, they shall not disclose or use any such information to gain personal advantage or advantage for others, or to adversely affect the interest of others.

PUBLIC

17. Arbitrators shall not disclose a decision or report of the arbitration tribunal or parts thereof prior to its publication in accordance with Article 321 (Arbitration tribunal decisions and rulings) of Part Six (Dispute Settlement).

18. Arbitrators shall not, at any time, disclose the deliberations of an arbitration tribunal, or any arbitrator's view, nor make any statements on the proceedings for which they have been appointed or on the issues in dispute in the proceedings.

VIII. Expenses

19. Arbitrators shall keep a record and render a final account of the time devoted to the proceedings and of their expenses, as well as of the time and expenses of an assistant, if applicable.

PUBLIC

ANNEX 31

PUBLIC

PROTOCOL
ON SOCIAL SECURITY COORDINATION

TITLE I

GENERAL PROVISIONS

ARTICLE SSC.1

Definitions

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

1. "activity as an employed person" means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Kingdom of Spain where such activity or equivalent situation exists in the Kingdom of Spain or the social security legislation of the United Kingdom, in respect of Gibraltar, where such activity or equivalent situation exists in Gibraltar;

2. "activity as a self-employed person" means any activity or equivalent situation treated as such for the purposes of the social security legislation of the Kingdom of Spain where such activity or equivalent situation exists in the Kingdom of Spain or the social security legislation of the United Kingdom in respect of Gibraltar, where such activity or equivalent situation exist in Gibraltar;

3. "assisted reproduction services" means any medical, surgical or obstetric services provided for the purpose of assisting a person to carry a child;

4. "benefits in kind" means:

   (i) for the purposes of Chapter 1 of Title III, benefits in kind provided for under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, which are intended to supply, make available, pay directly or reimburse the cost of medical care and products and services ancillary to that care;

   (ii) for the purposes of Chapter 2 of Title III, all benefits in kind relating to accidents at work and occupational diseases as defined in point (i) and provided for under the schemes of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, regarding accidents at work and occupational diseases;

5. "child-raising period" refers to any period which is credited under the pension legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, or which provides a supplement to a pension explicitly for the reason that a person has raised a child, irrespective of the method used to calculate those periods and whether they accrue during the time of child-raising or are acknowledged retroactively;

6. "civil servant" means a person considered to be such or treated as such by either the Kingdom of Spain, where the administration employing them is subject to the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, where the administration employing them is subject to the legislation of the United Kingdom, in respect of Gibraltar;

PUBLIC

7. "competent authority" means, in respect of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, the Minister, Ministers or other equivalent authority responsible for social security schemes throughout or in any part of the Kingdom of Spain or Gibraltar;

8. "competent institution" means:

   (i) the institution with which the person concerned is insured at the time of the application for benefit; or

   (ii) the institution from which the person concerned is or would be entitled to benefits if that person or a member or members of their family resided in either the Kingdom of Spain, where the institution is situated in the Kingdom of Spain or Gibraltar, where the institution is situated in Gibraltar; or

   (iii) the institution notified by the competent authority of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever is concerned; or

   (iv) in the case of a scheme relating to an employer's obligations in respect of the benefits set out in Article SSC.4(1), either the employer or the insurer involved or, in default thereof, the body or authority notified by the competent authority of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever is concerned;

9. "death grant" means any one-off payment in the event of death, excluding the lump-sum benefits referred to in paragraph (20);

PUBLIC

10. "Frontier worker" means any person covered by the definition in Part Four, Title I, Article 291(2) and (3);

11. "home base" means the place from where the crew member normally starts and ends a duty period or a series of duty periods, and where, under normal conditions, the operator/airline is not responsible for the accommodation of the crew member concerned;

12. "institution" means, in respect of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, the body or authority responsible for applying all or part of the legislation;

13. "institution of the place of residence" and "institution of the place of stay" mean, respectively, the institution which is competent to provide benefits in the place where the person concerned resides and the institution which is competent to provide benefits in the place where the person concerned is staying, in accordance with the legislation administered by that institution or, where no such institution exists, the institution designated by the relevant competent authority;

14. "insured person", in relation to the social security branches covered by Chapters 1 and 3 of Title III, means any person satisfying the conditions required under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever is competent under Title II in order to have the right to benefits, taking into account the provisions of this Protocol;

PUBLIC

15. "legislation" means, in respect of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article SSC.4(1), but excludes contractual provisions other than those which serve to implement an insurance obligation arising from the laws and regulations referred to in this point or which have been the subject of a decision by the public authorities which makes them obligatory or extends their scope, provided that the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever is concerned, makes a declaration to that effect, notified to the Specialised Committee on the Circulation of Persons. The Union shall publish such a declaration in the *Official Journal of the European Union*;

16. "long-term care benefit" means a benefit in kind or in cash the purpose of which is to address the care needs of a person who, on account of impairment, requires considerable assistance, including but not limited to assistance from another person or persons to carry out essential activities of daily living for an extended period of time in order to support their personal autonomy; this includes benefits granted for the same purpose to a person providing such assistance;

17. "member of the family" means:

(i) (A) any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided;

(B) with regard to benefits in kind pursuant to Chapter 1 of Title III, any person defined or recognised as a member of the family or designated as a member of the household by the legislation of the Kingdom of Spain, where that person resides in the Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, where that person resides in Gibraltar;

PUBLIC

(ii) if the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever is applicable under point (i) does not make a distinction between the members of the family and other persons to whom it is applicable, the spouse, minor children, and dependent children who have reached the age of majority shall be considered members of the family;

(iii) if, under the legislation which is applicable under points (i) and (ii), a person is considered a member of the family or member of the household only if that person lives in the same household as the insured person or pensioner, this condition shall be considered satisfied if the person in question is mainly dependent on the insured person or pensioner;

18. "period of employment" means periods so defined or recognised by the legislation under which they were completed, and all periods treated as such, where they are regarded by that legislation as equivalent to periods of employment or self-employment;

19. "period of insurance" means periods of contribution, employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by that legislation as equivalent to periods of insurance;

20. "pension" covers not only pensions but also lump-sum benefits which can be substituted for them and payments in the form of reimbursement of contributions and, subject to the provisions of Title III, revaluation increases or supplementary allowances;

PUBLIC

21. "pre-retirement benefit" means all cash benefits, other than an unemployment benefit or an early old-age benefit, provided from a specified age to workers who have reduced, ceased or suspended their remunerative activities until the age at which they qualify for an old-age pension or an early retirement pension, the receipt of which is not conditional upon the person concerned being available to the employment services of the Kingdom of Spain or Gibraltar, whichever is competent;

22. "early old-age benefit" means a benefit provided before the normal pension entitlement age is reached and which either continues to be provided once the said age is reached or is replaced by another old-age benefit;

23. "registered office or place of business" means the registered office or place of business where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out;

24. "residence" means the place where a person legally resides;

25. "special non-contributory cash benefits" means those non-contributory cash benefits which:

    (i) are intended to provide either:

        (A) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article SSC.4(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Kingdom of Spain or Gibraltar, whichever is concerned; or

PUBLIC

(B) solely specific protection for the disabled, closely linked to the said person's social environment in the Kingdom of Spain or Gibraltar, whichever is concerned, and

(ii) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone;

26. "special scheme for civil servants" means any social security scheme which is different from the general social security scheme applicable to employed persons in the Kingdom of Spain or Gibraltar, whichever is concerned, and to which all, or certain categories of, civil servants are directly subject

27. "stay" means temporary residence;

28. "pensioner" means a person who is in receipt of a statutory old-age, invalidity or survivors benefit on behalf of the Kingdom of Spain or the United Kingdom following the pursuance of an employed or self-employed activity in the Kingdom of Spain or Gibraltar;

29. "family benefit" means all benefits in kind or in cash intended to meet family expenses, excluding advances for maintenance payments and special childbirth and adoption allowances mentioned in Annex.SSC-1.

PUBLIC

ARTICLE SSC.2

Communications and notifications

The procedure provided for in paragraphs (2) and (3) of Article 6 of the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community, of one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, shall not apply to formal communications and decisions to be notified, made by or addressed to the competent authorities of the United Kingdom, in respect of Gibraltar, pursuant to this Protocol.

PUBLIC

ARTICLE SSC.3

Persons covered

This Protocol applies to:

1) Union citizens legally residing in the Kingdom of Spain, who are or were subject to the legislation of the United Kingdom, in respect of Gibraltar, following the pursuance of an activity as a frontier worker as defined in Article SSC.1(10) in Gibraltar, as well as their family members and survivors residing in the Kingdom of Spain;

2) United Kingdom nationals legally residing in Gibraltar, who are or were subject to the legislation of the Kingdom of Spain following the pursuance of an activity as a frontier worker as defined in Article SSC.1(10) in the Kingdom of Spain, as well as their family members and survivors residing in Gibraltar;

3) Persons referred to in Article 295 of the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community, of one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, who pursue an activity as employed persons for an employer which normally carries out its activities in the Kingdom of Spain and Gibraltar respectively and who are posted for a limited period by that employer to Gibraltar and the Kingdom of Spain, respectively, to supply services that are both locally produced and consumed at the contiguous frontier zone on that employer's behalf and who return at least once a week to the Kingdom of Spain or Gibraltar respectively.

PUBLIC

ARTICLE SSC.4

Matters covered

1. 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; and

(j) family benefits.

2. Unless otherwise provided for in Annex SSC-4, this Protocol applies to general and special social security schemes, whether contributory or non-contributory, and to schemes relating to the obligations of an employer or ship-owner.

3. The provisions of Title III shall not, however, affect the legislative provisions of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, concerning a ship-owner's obligations.

4. This Protocol does not apply to:

(a) special non-contributory cash benefits;

(b) long-term care benefits;

(c) social and medical assistance;

PUBLIC

(d) benefits in relation to which the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, assumes the liability for damages to persons and provides for compensation, such as those for victims of war and military action or their consequences; victims of crime, assassination or terrorist acts; victims of damage occasioned by agents of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, in the course of their duties; or victims who have suffered a disadvantage for political or religious reasons or for reasons of descent; or

(e) assisted reproduction services.

PUBLIC

ARTICLE SSC.5

Equality of treatment

Unless otherwise provided for by this Protocol, persons to whom this Protocol applies shall enjoy, as regards the branches of social security covered by Article SSC.4(1) the same benefits and be subject to the same obligations under the legislation applicable in the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, as the nationals thereof.

ARTICLE SSC.6

Equal treatment of benefits, income, facts or events

Unless otherwise provided for in this Protocol, the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, 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 Kingdom of Spain or the United Kingdom, in respect of Gibraltar, 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 Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent, or the United Kingdom, in respect of Gibraltar, where the Kingdom of Spain is competent or to income acquired in the Kingdom of Spain, where the United Kingdom in respect of Gibraltar is competent, or in Gibraltar, where the Kingdom of Spain is competent;

(b) where, under the legislation of the Kingdom of Spain, the United Kingdom in respect of Gibraltar is competent, or of the United Kingdom, in respect of Gibraltar, where the Kingdom of Spain is competent, legal effects are attributed to the occurrence of certain facts or events, the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall take account of like facts or events that have occurred in the Kingdom of Spain, where the United Kingdom in respect of Gibraltar is competent or in Gibraltar, where the Kingdom of Spain is competent as though they had taken place in the territory within the remit of the competent institution.

PUBLIC

ARTICLE SSC.7

Aggregation of periods

Unless otherwise provided for in this Protocol, the competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar shall, to the extent necessary, take into account periods of insurance or employment or self-employment completed under the legislation of the United Kingdom, in respect of Gibraltar or the Kingdom of Spain, as the case may be, 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 or self-employment:

(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 SSC.8

Waiving of residence rules

Unless otherwise provided for in this Protocol, cash benefits payable under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, or under this Protocol shall not be subject to any reduction, amendment, suspension, withdrawal or confiscation on account of the fact that the beneficiary or the members of their family reside in the Kingdom of Spain, where the institution responsible for providing benefits is situated in Gibraltar, or in Gibraltar, where the institution responsible for providing benefits is situated in the Kingdom of Spain.

PUBLIC

ARTICLE SSC.9

Preventing of the overlapping of benefits

Unless otherwise provided, this Protocol shall neither confer nor maintain the right to several benefits of the same kind for one and the same period of compulsory insurance.

PUBLIC

TITLE II

DETERMINATION OF THE LEGISLATION APPLICABLE

ARTICLE SSC.10

General rules

1. Persons to whom this Protocol applies shall be subject to the legislation of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar. Such legislation shall be determined in accordance with this Title.

2. For the purposes of this Title, 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 SSC.11, SSC.13 and SSC.14:

(a) a person pursuing an activity as an employed or self-employed person in the Kingdom of Spain shall be subject to the legislation of the Kingdom of Spain; a person pursuing an activity as an employed or self-employed person in Gibraltar shall be subject to the legislation of the United Kingdom, in respect of Gibraltar;

(b) a civil servant shall be subject to the legislation of either the Kingdom of Spain, where the administration employing them is subject to the legislation of the Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, where the administration employing them is subject to the legislation of the United Kingdom, in respect of Gibraltar;

(c) a person receiving unemployment benefits under the legislation of the Kingdom of Spain shall be subject to the legislation of the Kingdom of Spain; a person receiving unemployment benefits under the legislation of the United Kingdom, in respect of Gibraltar, shall be subject to the legislation of the United Kingdom, in respect of Gibraltar;

(d) a pensioner who is residing in the Kingdom of Spain or Gibraltar shall be subject to the legislation of the Kingdom of Spain, where that person resides in the Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, where that person resides in Gibraltar, without prejudice to other provisions of this Protocol guaranteeing them benefits under the other legislation.

PUBLIC

4. For the purposes of this Title, a person pursuing an activity as an employed or self-employed person normally pursued on board a vessel at sea flying the flag of the Kingdom of Spain shall be deemed to be pursuing that activity in the Kingdom of Spain; a person pursuing an activity as an employed or self-employed person normally pursued on board a vessel at sea flying the flag of the United Kingdom, in respect of Gibraltar, shall be deemed to be pursuing that activity in Gibraltar. However, a person employed on board a vessel flying the flag of the Kingdom of Spain and remunerated for such activity by an undertaking or a person whose registered office or place of business is in Gibraltar shall be subject to the legislation of the United Kingdom, in respect of Gibraltar, if that person resides in Gibraltar; a person employed on board a vessel flying the flag of the United Kingdom, in respect of Gibraltar, and remunerated for such an activity by an undertaking or a person whose registered office or place of business is in the Kingdom of Spain shall be subject to the legislation of the Kingdom of Spain if that person resides in the Kingdom of Spain. The undertaking or person paying the remuneration shall be considered as the employer for the purposes of the said legislation.

5. For the purpose of this Title, a person pursuing an activity as a flight crew or cabin crew member performing air passenger or freight services shall be deemed to be pursuing that activity in the Kingdom of Spain where the home base is located in the Kingdom of Spain, or in Gibraltar, where the home base is located in Gibraltar.

PUBLIC

ARTICLE SSC.11

Detached frontier workers

1. A Union citizen to whom this Protocol applies, who pursues an activity as an employed frontier worker as defined in Article SSC.1(10) in Gibraltar, for an employer which normally carries out its activities there, and who is sent by that employer to the Kingdom of Spain, to perform work on that employer's behalf, shall continue to be subject to the legislation of the United Kingdom, in respect of Gibraltar, provided that

(a) the anticipated duration of such work does not exceed 24 months; and

(b) that person is not sent to replace another detached worker.

2. Paragraph 1 shall apply *mutatis mutandis* to a United Kingdom national to whom this Protocol applies, who pursues an activity as an employed frontier worker in the Kingdom of Spain, for an employer which normally carries out its activities there, and who is sent by that employer to Gibraltar, to perform work on that employer's behalf.

3. A Union citizen to whom this Protocol applies, who normally pursues an activity as a self-employed frontier worker in Gibraltar, who goes to pursue a similar activity in the Kingdom of Spain, shall continue to be subject to the legislation of the United Kingdom in respect of Gibraltar, provided that the anticipated duration of such activity does not exceed 24 months.

4. Paragraph 3 shall apply *mutatis mutandis* to a United Kingdom national to whom this Protocol applies, who normally pursues an activity as a self-employed frontier worker in the Kingdom of Spain, who goes to pursue a similar activity in Gibraltar.

PUBLIC

ARTICLE SSC.12

Posted workers

1. A person who pursues an activity as an employed person in the Kingdom of Spain or Gibraltar for an employer which normally carries out its activities there and who is sent by that employer to Gibraltar, where the employer normally carries out its activities in the Kingdom of Spain, or to the Kingdom of Spain, where the employer normally carries out its activities in Gibraltar, to perform work on that employer's behalf shall continue to be subject to the legislation of the Kingdom of Spain, where the employer normally carries out its activities in the Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, where the employer normally carries out its activities in Gibraltar, provided that:

(a) the duration of such work does not exceed 24 months;

(b) that person is not sent to replace another person; and

(c) that person is resident in the Kingdom of Spain and returns at least once per week to the Kingdom of Spain if they are posted to Gibraltar, or is resident in Gibraltar and returns at least once per week to Gibraltar if they are posted to the Kingdom of Spain.

PUBLIC

ARTICLE SSC.13

Pursuit of activities in the Kingdom of Spain and Gibraltar

1. For persons to whom this Protocol applies who, in addition to their activity as frontier workers as defined in Article SSC.1(10), also pursue an activity in their place of residence, the following paragraphs shall apply.

2. A person who normally pursues an activity as an employed person in the Kingdom of Spain and Gibraltar shall be subject to:

(a) the legislation of the place of residence if that person pursues a substantial part of their activity there; or

(b) if that person does not pursue a substantial part of their activity in the place of residence:

(i) the legislation of the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain depending on where the registered office or place of business of the undertaking or employer is situated if that person is employed by one undertaking or employer; or

(ii) the legislation of the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain depending on where the registered office or place of business of the undertakings or employers is situated if that person is employed by two or more undertakings or employers which have their registered office or place of business only in the Kingdom of Spain or only in Gibraltar; or

PUBLIC

(iii) the legislation of the Kingdom of Spain if the person resides in Gibraltar, or of the United Kingdom, in respect of Gibraltar if the person resides in the Kingdom of Spain, if that person is employed by two or more undertakings or employers, which have their registered office or place of business in the Kingdom of Spain and Gibraltar; or

(iv) the legislation of the place of residence if that person is employed by one or more undertakings or employers, at least one of which has their registered office or place of business outside the Kingdom of Spain and Gibraltar.

3. A person who normally pursues an activity as a self-employed person in the Kingdom of Spain and Gibraltar shall be subject to:

(a) the legislation of the place of residence if that person pursues a substantial part of their activity there; or

(b) the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, depending on where the centre of interest of their activities is situated, if that person does not pursue a substantial part of their activity in their place of residence.

4. A person who normally pursues an activity as an employed person and an activity as a self-employed person in the Kingdom of Spain and Gibraltar shall be subject to the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, depending on where that person pursues an activity as an employed person, or, if that person pursues such an activity in the Kingdom of Spain and Gibraltar, to the legislation determined in accordance with paragraph 2.

PUBLIC

5. A person who is employed as a civil servant by the Kingdom of Spain and who pursues an activity as an employed or self-employed person in Gibraltar or vice versa shall be subject to the legislation of the Kingdom of Spain where the administration employing them is subject to the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, where the administration employing them is subject to the legislation of the United Kingdom, in respect of Gibraltar.

6. Persons referred to in paragraphs 2 to 5 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 United Kingdom, in respect of Gibraltar, or the Kingdom of Spain whichever is concerned.

ARTICLE SSC. 14

Voluntary insurance or optional continued insurance

1. Articles SSC.10, SSC.11 and SSC.13 do not apply to voluntary insurance or to optional continued insurance unless, in respect of one of the branches referred to in Article SSC.4, only a voluntary scheme of insurance exists in the Kingdom of Spain or the United Kingdom, in respect of Gibraltar.

PUBLIC

2. Where, by virtue of the legislation of the Kingdom of Spain, the person concerned is subject to compulsory insurance in the Kingdom of Spain, that person may not be subject to a voluntary insurance scheme or an optional continued insurance scheme in the United Kingdom, in respect of Gibraltar. Where, by virtue of the legislation of the United Kingdom, in respect of Gibraltar, the person concerned is subject to compulsory insurance in the United Kingdom, in respect of Gibraltar, that person may not be subject to a voluntary insurance scheme or an optional continued insurance scheme in the Kingdom of Spain. 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 their choice.

3. In respect of invalidity, old-age and survivors' benefits, the person concerned may join the voluntary or optional continued insurance scheme of the Kingdom of Spain, even if that person is compulsorily subject to the legislation of the United Kingdom, in respect of Gibraltar, provided that that person has been subject, at some stage in their career, to the legislation of the Kingdom of Spain, 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 Kingdom of Spain. Likewise, in respect of invalidity, old-age and survivors' benefits, the person concerned may join the voluntary or optional continued insurance scheme of the United Kingdom, in respect of Gibraltar, even if that person is compulsorily subject to the legislation of the Kingdom of Spain, provided that that person has been subject, at some stage in their career, to the legislation of the United Kingdom, in respect of Gibraltar, 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 United Kingdom, in respect of Gibraltar.

PUBLIC

4. Where the legislation of the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain makes admission to voluntary insurance or optional continued insurance conditional upon residence there or upon previous activity as an employed or self-employed person, subparagraph (b) of Article SSC.6 shall apply only to persons who have been subject, at some earlier stage, to the legislation concerned, on the basis of an activity as an employed or self-employed person.

PUBLIC

ARTICLE SSC.15

Obligations of the employer

1. An employer of a frontier worker who is subject to the legislation of:

(a) the United Kingdom, in respect of Gibraltar or of

(b) the Kingdom of Spain

shall fulfil all the obligations laid down by the legislation applicable to its employees, notably the obligation to pay the contributions provided for by that legislation, as if it had its registered office or place of business in the Kingdom of Spain or in Gibraltar, respectively.

2. An employer of a frontier worker who is subject to the legislation of:

(a) the Kingdom of Spain, where the employer does not have a place of business in the Kingdom of Spain; or

(b) the United Kingdom, in respect of Gibraltar, where the employer does not have a place of business in Gibraltar

may agree with the frontier worker that the latter may fulfil the employer's obligations on its behalf as regards the payment of contributions, without prejudice to the employer's underlying obligations and the employer shall send notice of such an arrangement to the competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, respectively.

PUBLIC

TITLE III

SPECIAL PROVISIONS CONCERNING THE VARIOUS CATEGORIES OF BENEFITS

PUBLIC

CHAPTER 1

SICKNESS, MATERNITY AND EQUIVALENT PATERNITY BENEFITS

SECTION 1

INSURED PERSONS AND MEMBERS OF THEIR FAMILIES
EXCEPT PENSIONERS AND MEMBERS OF THEIR FAMILIES

ARTICLE SSC.16

Residence in the Kingdom of Spain, where the United Kingdom,
in respect of Gibraltar is competent, or in Gibraltar,
where the Kingdom of Spain is competent

Frontier workers and detached frontier workers who are subject to the legislation applicable in the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, and who reside respectively in Gibraltar or the Kingdom of Spain, as well as the members of their family, are entitled to benefits in kind in the place of residence provided, on behalf of the competent institution, by the institution of the place of residence, in accordance with the legislation of the place of residence, as though that person were insured under that legislation.

ARTICLE SSC.17

Stay in the place of employment or self-employment

1. Frontier workers, detached frontier workers and posted workers shall be entitled to benefits in kind while staying in the place of employment or self-employment. In the case of frontier workers and detached frontier workers, these 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 there.

2. In the case of posted workers, these benefits in kind shall be those which become necessary on medical grounds during their stay, taking into account the nature of the benefits and expected length of the stay. These benefits in kind shall be provided on behalf of the competent institution, by the institution of the place of stay, in accordance with the legislation that it applies, as though the person were insured under the said legislation.

3. Paragraph 2 does not apply where the person concerned travelled to the Kingdom of Spain or Gibraltar, as the case may be, with the purpose of receiving the benefits in kind.

PUBLIC

ARTICLE SSC.18

Cash benefits

1. Frontier workers and posted workers and the members of their family 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 which the competent institution applies.

2. Where the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, provides that the calculation of cash benefits shall be based on an average income or on an average contribution basis, the competent institution shall determine such average income or average contribution basis exclusively by references to the incomes confirmed as having been paid, or to the contribution bases applied during the periods completed under the said legislation.

3. Where the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, provides that the calculation of cash benefits shall be based on standard income, the competent institution 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 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 the Kingdom of Spain or the United Kingdom, in respect of Gibraltar.

PUBLIC

ARTICLE SSC.19

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 Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, shall remain entitled to benefits in kind in the place of residence, provided that that person resides in Gibraltar or in the Kingdom of Spain, as the case may be, and provided that the pension claimant satisfies the insurance conditions of the legislation of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, as referred to in paragraph 2. The right to benefits in kind in the place 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 either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, which, in the event of a pension being awarded, would become competent under Articles SSC.20 and SSC.21.

PUBLIC

SECTION 2

SPECIAL PROVISIONS FOR PENSIONERS AND THE MEMBERS OF THEIR FAMILY

PUBLIC

ARTICLE SSC.20

Right to benefits in kind under the legislation of the place of residence

A person who receives a pension or pensions under the legislation applicable in the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, and who is entitled to benefits in kind in the place of residence, shall, with the members of their family, receive such benefits in kind from and at the expense of the institution of the place of residence, as though that person were a pensioner whose pension was payable solely under the legislation of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, respectively.

ARTICLE SSC.21

No right to benefits in kind under the legislation of the place of residence

1. A person who:

(a) resides in the Kingdom of Spain;

(b) receives a pension or pensions under the legislation of the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain; and

(c) is not entitled to benefits in kind under the legislation of the Kingdom of Spain;

shall nevertheless receive such benefits for themselves and the members of their family, insofar as the pensioner would be entitled to them under the legislation of the United Kingdom, in respect of Gibraltar, if that person resided in Gibraltar. The benefits in kind shall be provided at the expense of the institution of Gibraltar by the institution of the place of residence, as though the person concerned were entitled to a pension and entitled to benefits in kind under the legislation of the place of residence.

2. A person who:

(a) resides in Gibraltar;

(b) receives a pension or pensions under the legislation of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar; and

(c) is not entitled to benefits in kind under the legislation of the United Kingdom, in respect of Gibraltar;

shall nevertheless receive such benefits for themselves and the members of their family, insofar as the pensioner would be entitled to them under the legislation of the Kingdom of Spain, if that person resided in the Kingdom of Spain. The benefits in kind shall be provided at the expense of the institution of the Kingdom of Spain by the institution of the place of residence, as though the person concerned were entitled to a pension and entitled to benefits in kind under the legislation of the place of residence.

PUBLIC

ARTICLE SSC.22

Continuation of treatment

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 Gibraltar if that person last pursued their activity as an employed or self-employed person there or in the Kingdom of Spain if that person last pursued their activity as an employed or self-employed person there, insofar as this is a continuation of treatment which began in Gibraltar or the Kingdom of Spain respectively. "Continuation of treatment" means the continued investigation, diagnosis and treatment of an illness for its entire duration.

ARTICLE SSC.23

Cash benefits for pensioners

1. Cash benefits shall be paid to a person receiving a pension or pensions under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever is applied by the competent institution of the place in which is situated the competent institution responsible for the cost of benefits in kind provided to the pensioner in their place of residence. Article SSC.18 will apply *mutatis mutandis*.

2. Paragraph 1 also applies to the members of a pensioner's family.

PUBLIC

ARTICLE SSC.24

Contributions

The institution of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, 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 Article SSC.20 and to Article SSC.21 is to be borne by an institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar.

PUBLIC

SECTION 3

COMMON PROVISIONS

ARTICLE SSC.25

General provisions

Articles SSC.21 to SSC.24 shall not apply to a pensioner or the members of the pensioner's family who are entitled to benefits under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, on the basis of an activity as an employed or self-employed person.

ARTICLE SSC.26

Prioritising of the right to benefits in kind – special rule
for the right of members of the family to benefits in the place of residence

1. Unless otherwise provided for by paragraphs 2 and 3, where a member of the family has an independent right to benefits in kind based on the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, or on this Chapter, such right shall take priority over a derivative right to benefits in kind for members of the family.

2. Unless otherwise provided for by paragraph 3, where the independent right in the place of residence exists directly and solely on the basis of the residence of the person concerned in that place, a derivative right to benefits in kind shall take priority over the independent right.

3. Notwithstanding paragraphs 1 and 2, benefits in kind shall be provided to the members of the family of an insured person at the expense of the competent institution in the place in which they reside, where:

(a) those members of the family reside in the Kingdom of Spain or Gibraltar and where under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, respectively, the right to benefits in kind is not subject to conditions of insurance or activity as an employed or self-employed person; and

(b) 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 Kingdom of Spain or Gibraltar, or receives a pension from either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, respectively, on the basis of an activity as an employed or self-employed person.

PUBLIC

ARTICLE SSC.27

Reimbursements between institutions

1. The benefits in kind provided by the institution of the Kingdom of Spain on behalf of the institution in the United Kingdom, in respect of Gibraltar, or of the United Kingdom, in respect of Gibraltar, on behalf of the institution in the Kingdom of Spain under this Chapter shall give rise to full reimbursement.

2. The reimbursements referred to in paragraph 1 shall be determined and effected in accordance with the Administrative Arrangement agreed upon between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain.

3. The Kingdom of Spain or the United Kingdom, in respect of Gibraltar, and their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between them.

PUBLIC

CHAPTER 2

BENEFITS IN RESPECT OF ACCIDENTS AT WORK
AND OCCUPATIONAL DISEASES

PUBLIC

ARTICLE SSC.28

Right to benefits in kind and in cash

1. Without prejudice to any more favourable provisions in paragraphs 2 and 3 of this Article, Articles SSC.16 and SSC.17 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 the Kingdom of Spain, when the United Kingdom, in respect of Gibraltar, is competent, or in Gibraltar, when the Kingdom of Spain is competent, 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 that person were insured under that legislation.

3. Article SSC.18 also applies to benefits falling within this Chapter.

ARTICLE SSC.29

Costs of transport

1. The competent institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, depending on which 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 their place of residence or to a hospital, shall meet such costs to the corresponding place where the person resides.

2. The competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, depending on which 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 where the person was residing at the time of the accident.

ARTICLE SSC.30

Benefits for an occupational disease where the person suffering from such a disease has been exposed to the same risk in the Kingdom of Spain and Gibraltar

When a person who has contracted an occupational disease has, under the legislation applicable in the Kingdom of Spain or in the United Kingdom, in respect of Gibraltar, pursued an activity which by its nature is likely to cause the said disease, the benefits that that person or their survivors may claim shall be provided exclusively under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whoever is the last where such conditions are satisfied.

PUBLIC

ARTICLE SSC.31

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 applicable in the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, the following rules shall apply:

(a) if the person concerned, while in receipt of benefits, has not pursued, under the legislation applicable either in the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, an activity as an employed or self-employed person likely to cause or aggravate the disease in question, the competent institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever is the first where the person has received benefits, 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 applicable either in the Kingdom of Spain or Gibraltar, the competent institution of either the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, whichever is the first where the person has received benefits, shall bear the cost of the benefits under the legislation it applies without taking the aggravation into account. The competent institution of either the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, whichever is the second where the person has received benefits, 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 applied by that institution;

PUBLIC

(c) the rules concerning reduction, suspension or withdrawal laid down by the legislation applicable either in the Kingdom of Spain or in the United Kingdom, in respect of Gibraltar, shall not be invoked against persons receiving benefits provided by institution of the other in accordance with subparagraph (b).

PUBLIC

ARTICLE SSC.32

Rules for taking into account the special features of the legislations concerned

1. If there is no insurance against accidents at work or occupational disease in the place, where 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 disease in the Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, whichever is competent, the provisions of this Chapter 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 the Kingdom of Spain, if that person sustains an accident at work or suffers from an occupational disease during residence in Gibraltar, or under the legislation of the United Kingdom in respect of Gibraltar, if that person sustains an accident at work or suffers from an occupational disease during residence in the Kingdom of Spain. Costs shall be borne by the institution that is competent for the benefits in kind under the legislation of the Kingdom of Spain, or the United Kingdom in respect of Gibraltar, whichever is competent.

3. Article SSC.6 applies to the competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, as regards the equivalence of accidents at work and occupational diseases which either have occurred or have been confirmed subsequently under the legislation applicable in the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain, respectively, 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 applicable either in the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, depending on where the accident at work or the occupational disease had occurred or had been confirmed.

ARTICLE SSC.33

Reimbursements between institutions

1. Article SSC.28 also applies to benefits falling within this Chapter, and reimbursement shall be made on the basis of actual costs.

2. The Kingdom of Spain or the United Kingdom, in respect of Gibraltar, or their competent authorities, may provide for other methods of reimbursement or waive all reimbursement between them.

PUBLIC

CHAPTER 3

DEATH GRANTS

PUBLIC

ARTICLE SSC.34

Rights to grants where death occurs in, or where the person entitled resides in the Kingdom of Spain, when the United Kingdom, in respect of Gibraltar, is competent, or in Gibraltar, when the Kingdom of Spain is competent

1. When an insured person or a member of their family dies in the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent, or in Gibraltar, where the Kingdom of Spain is competent, the death shall be deemed to have occurred where the competent institution is located.

2. The competent institution shall be obliged to provide death grants payable under the legislation it applies, even if the person entitled resides in the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent or in Gibraltar, where the Kingdom of Spain is competent.

3. Paragraphs 1 and 2 shall also apply when the death is the result of an accident at work or an occupational disease.

ARTICLE SSC.35

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 one pension or more pensions under the legislation applicable in the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, when that pensioner was residing in the Kingdom of Spain, when the institution responsible for the cost of benefits in kind is in Gibraltar and residing in Gibraltar, when the institution responsible for the cost of benefits in kind is in the Kingdom of Spain, 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 their death in the place where that institution is situated.

2. Paragraph 1 shall apply *mutatis mutandis* to the members of the family of a pensioner.

PUBLIC

CHAPTER 4

INVALIDITY BENEFITS

PUBLIC

ARTICLE SSC. 36

Persons subject only to type A legislation

1. For the purposes of this Chapter, "type A legislation" means legislation under which the amount of invalidity benefits is independent of the duration of the periods of insurance, and "type B legislation" means any other legislation.

2. A person who has completed periods of insurance exclusively under type A legislation shall be entitled to benefits only from the institution of the place whose legislation was applicable at the time when the incapacity for work followed by invalidity occurred, taking into account, where appropriate, Article SSC.37 and shall receive such benefits in accordance with that legislation.

3. If the legislation referred to in paragraph 2 contains rules for 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 Articles SSC.46(2), SSC 46(3) and 48(3) shall apply *mutatis mutandis*.

ARTICLE SSC.37

Special provisions on aggregation of periods

The competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose legislation makes the acquisition, retention or recovery of the right to benefits conditional upon the completion of periods of insurance shall, where necessary, apply Article SSC.44(1).

PUBLIC

ARTICLE SSC.38

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 type A and type B legislation shall be entitled to benefits under Chapter 5, which shall apply *mutatis mutandis* taking into account paragraph 3.

2. 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, that person shall receive benefits according to Article SSC.36 under type A legislation, provided that:

– he satisfies the conditions of that legislation exclusively, or of others of the same type taking into account, where appropriate Article SSC 37 but without having recourse to periods of insurance or residence completed under a type B legislation and

– he does not assert any claims to old-age benefits, taking into account Article SSC.43.

3. A decision taken by an institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, concerning the degree of invalidity of a claimant shall be binding on the institution of the United Kingdom, in respect of Gibraltar, or of the Kingdom of Spain, respectively.

PUBLIC

ARTICLE SSC. 39

Aggravation of invalidity

1. In the case of aggravation of an invalidity for which a person is receiving benefits under the legislation of the Kingdom of Spain or the United Kingdom in respect of Gibraltar, the following provisions shall apply, taking the aggravation into account:

(a) the benefits shall be provided in accordance with Chapter 5, applied *mutatis mutandis*;

(b) however, where the person concerned has been subject to type A legislations and since receiving benefit has not been subject to the type B legislation, the benefit shall be provided in accordance with Article SSC.36(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 them 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 the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, the previously competent institution shall provide the benefits in accordance with the legislation it applies, taking into account the aggravation and, where appropriate, Article SSC.37.

PUBLIC

ARTICLE SSC.40

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 Chapter 5.

2. Where a person receiving invalidity benefits can establish a claim to old-age benefits under the legislation of both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, in accordance with Article SSC.47, any institution which is responsible for providing invalidity benefits under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall continue to provide such a person with the invalidity benefits to which that person 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 applicable, in accordance with Article SSC.36, are converted into old-age benefits and where the person concerned does not yet satisfy the conditions laid down by the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar for receiving those benefits, the person concerned shall receive, from the Kingdom of Spain and/or the United Kingdom, in respect of Gibraltar, invalidity benefits from the date of the conversion.

Those invalidity benefits shall be provided in accordance with Chapter 5 as if that Chapter 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 that person is entitled to invalidity benefits under the latter legislation.

4. The invalidity benefits provided under Article SSC.36 shall be recalculated in accordance with Chapter 5 as soon as the beneficiary satisfies the qualifying conditions for invalidity benefits laid down by a type B legislation, or as soon as that person receives old-age benefits.

ARTICLE SSC.41

Special provisions for civil servants

Articles SSC.7, SSC.36, SSC.38, SSC.39, SSC.40 and SSC.53(2) and (3) shall apply *mutatis mutandis* to persons covered by a special scheme for civil servants.

PUBLIC

CHAPTER 5

OLD-AGE AND SURVIVORS' PENSIONS

PUBLIC

ARTICLE SSC.42

Taking into account child-raising periods

1. Where, under the legislation of the Kingdom of Spain, the institution which is competent under Title II is the Kingdom of Spain, or where under the legislation of the United Kingdom, in respect of Gibraltar, the institution which is competent under Title II is the United Kingdom, in respect of Gibraltar, no child-raising period is taken into account, the institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose legislation, according to Title II, was applicable to the person concerned on the grounds that the person was pursuing an activity as an employed or self-employed worker at the date when, under that legislation, the child-raising period started to be taken into account for the child concerned, shall remain responsible for taking into account that period as a child-raising period under its own legislation, as if such child-raising took place in its own territory.

2. Paragraph 1 shall not apply if the person concerned is, or becomes, subject to the legislation of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, due to the pursuit of an employed or self-employed activity.

ARTICLE SSC.43

General provisions

1. The competent institutions shall determine entitlement to benefit, under the legislation of either the Kingdom of Spain, where the person concerned has been subject to Spanish legislation when a request for award has been submitted, or the United Kingdom, in respect of Gibraltar, where the person concerned has been subject to the legislation of the United Kingdom, in respect of Gibraltar, or both 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 the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, or both.

2. If at a given moment the person concerned does not satisfy, or no longer satisfies, the conditions laid down by the legislation of either the Kingdom of Spain, where that person has been subject to the legislations of the Kingdom of Spain, or of the United Kingdom, in respect of Gibraltar, where that person has been subject to the legislation of the United Kingdom, in respect of Gibraltar, the institutions applying legislation the conditions of which have been satisfied shall not take into account, when performing the calculation in accordance with subparagraph (a) or (b) of Article SSC.45(1), the periods completed under the legislation 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.

PUBLIC

4. A new calculation shall be performed automatically as and when the conditions to be fulfilled under the other legislation 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 legislation have already been taken into account by virtue of paragraphs 2 or 3.

PUBLIC

ARTICLE SSC.44

Special provisions on aggregation of periods

1. Where the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, 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 the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall take into account periods completed under the legislation of respectively the United Kingdom, in respect of Gibraltar or the Kingdom of Spain or, 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 the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, 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 the Kingdom of Spain, in case of a scheme of the United Kingdom, in respect of Gibraltar, or of the United Kingdom, in respect of Gibraltar, in case of a scheme of the Kingdom of Spain, 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 under a special scheme in the Kingdom of Spain, in case of a scheme of the United Kingdom, in respect of Gibraltar, or in Gibraltar, in case of a scheme of the Kingdom of Spain.

3. Where the legislation or specific scheme of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, 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 the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, and is, at the time of the materialisation of the risk, insured under the legislation of the Kingdom of Spain, where previously insured under the legislation or a specific scheme of the United Kingdom, in respect of Gibraltar, or insured under the legislation of United Kingdom in respect of Gibraltar, where previously insured under the legislation or a specific scheme of the Kingdom of Spain, for the same risk or, failing that, if a benefit is due under the legislation of the Kingdom of Spain, where not due under the legislation of the United Kingdom, in respect of Gibraltar, or of the United Kingdom, in respect of Gibraltar, where not due under the legislation of the Kingdom of Spain, for the same risk. The latter condition shall, however, be deemed to be fulfilled in the cases referred to in Article SSC.50.

PUBLIC

ARTICLE SSC.45

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 which have been completed under the legislations of the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent, or of the United Kingdom, in respect of Gibraltar, where the Kingdom of Spain is competent, 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 both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar.

PUBLIC

2. Where appropriate, the competent institution shall apply, to the amount calculated in accordance with subparagraphs (a) and (b) of paragraph 1, all the rules relating to reduction, suspension or withdrawal, under the legislation it applies, within the limits provided for by Articles SSC.46 to SSC.48.

3. The person concerned shall be entitled to receive from the competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, the higher of the amounts calculated in accordance with subparagraphs (a) and (b) of paragraph 1.

4. Where the calculation pursuant to subparagraph (a) of paragraph 1 in the Kingdom of Spain or in the United Kingdom, in respect of Gibraltar invariably results in the independent benefit being equal to or higher than the pro rata benefit, calculated in accordance with subparagraph (b) of paragraph 1, the competent institution shall waive the pro rata calculation, provided that:

(a) such a situation is set out in Annex SSC-2.

(b) no legislation containing rules against overlapping, as referred to in Article SSC.47 and Article SSC.48, is applicable unless the conditions laid down in Article SSC.48 (2) are fulfilled; and

(c) Article SSC.50 is not applicable in the specific circumstances of the case in relation to periods completed under the legislation of the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent, or of the United Kingdom, in respect of Gibraltar, where the Kingdom of Spain is competent.

PUBLIC

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 Annex SSC-2. In such cases, the person concerned shall be entitled to the benefit calculated in accordance with the legislation of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar.

PUBLIC

ARTICLE SSC.46

Rules to prevent overlapping

1. Any overlapping of old-age and survivors' benefits calculated or provided on the basis of periods of insurance 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 the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, in the case of overlapping of a benefit in respect of 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 the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent, or in Gibraltar, where the Kingdom of Spain is competent, only where the legislation it applies provides for benefits or income acquired outside of its territory to be taken into account;

(b) the competent institution shall take into account the amount of benefits to be paid by the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar is competent, or by the United Kingdom, in respect of Gibraltar, where the Kingdom of Spain is competent, 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 Annex;

(c) the competent institution shall not take into account the amount of benefits acquired under the legislation of the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent, or of the United Kingdom, in respect of Gibraltar, where the Kingdom of Spain is competent, on the basis of voluntary insurance or continued optional insurance;

(d) if the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, applies rules to prevent overlapping because the person concerned receives benefits of the same or of a different kind under the legislation of the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain or income acquired in Gibraltar or the Kingdom of Spain, the benefit due may be reduced solely by the amount of such benefits or such income.

ARTICLE SSC.47

Overlapping of benefits of the same kind

1. Where benefits of the same kind due under the legislation of both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, overlap, the rules to prevent overlapping laid down by the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall not be applicable to a pro rata benefit.

PUBLIC

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

(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 both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, to avoid the same credited period being taken into account more than once; or

(ii) a benefit referred to in subparagraph (a).

The benefits and agreements referred to in subparagraphs (a) and (b) are listed in Annex SSC-3.

PUBLIC

ARTICLE SSC.48

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 both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, 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; however, the application of this subparagraph cannot deprive the person concerned of their status as a pensioner for the purposes of the other chapters of this Title under the conditions and the procedures laid down in Annex to Protocol on Social Security Coordination;

(b) 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 established for the calculation referred to in subparagraph (b) point (ii) of Article SSC.45(1);

(c) 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.

PUBLIC

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 or other income and all other elements for calculating part of their amount determined as a function of the ratio between periods of insurance referred to in subparagraph (b) point (ii) of Article SSC.45(1).

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* where the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, 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 respectively under the legislation of the United Kingdom, in respect of Gibraltar or the Kingdom of Spain, or of other income.

PUBLIC

ARTICLE SSC.49

Additional provisions for the calculation of benefits

1. For the calculation of the theoretical and pro rata amounts referred to in subparagraph (b) of Article SSC.45(1), the following rules shall apply:

(a) where the total length of the periods of insurance completed before the risk materialised under the legislations of both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, is longer than the maximum period required by the legislation of the Kingdom of Spain or of the United Kingdom in respect of Gibraltar for receipt of full benefit, the competent institution of the Kingdom of Spain, where the Kingdom of Spain is competent, or of the United Kingdom, in respect of Gibraltar, where the United Kingdom, in respect of Gibraltar, is competent, 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 Annex to Protocol on Social Security Coordination;

(c) if the legislation of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, 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;

PUBLIC

(ii) use, in order to determine the amount to be calculated in accordance with the periods of insurance completed under the legislation of either the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent, or of the United Kingdom, in respect of Gibraltar, where the Kingdom of Spain is competent, 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 SSC-4 for the Kingdom of Spain or for the United Kingdom, in respect of Gibraltar;

(d) in the event that subparagraph (c) is not applicable because the legislation of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, provides for the benefit to be calculated on the basis of elements other than periods of insurance which are not linked to time, the competent institution shall take into account, in respect of each period of insurance completed under the legislation of either the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar is competent, or of the United Kingdom in respect of Gibraltar, where the Kingdom of Spain is competent, 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 the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, 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 the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, in accordance with paragraph 1, in respect of the periods of insurance completed under the legislation of either the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent, or the United Kingdom, in respect of Gibraltar, where the Kingdom of Spain is competent.

PUBLIC

ARTICLE SSC.50

Periods of insurance of less than one year

1. Notwithstanding subparagraph (b) of Article SSC.45(1), the institution of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, 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 or self-employment which either qualify for, or directly increase, the benefit concerned.

2. The competent institution of both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall take into account the periods referred to in paragraph 1, for the purposes of subparagraph (b) point (i) of Article SSC.45(1).

3. If the effect of applying paragraph 1 would be to relieve all the institutions of both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, of their obligations, benefits shall be provided exclusively under the legislation of either the Kingdom of Spain, where the conditions under its legislation are the last to have been satisfied, or of the United Kingdom, in respect of Gibraltar, where the conditions under its legislation are the last to have been satisfied, as if all the periods of insurance completed and taken into account in accordance with Articles SSC.7 and SSC.44(1) and (2) had been completed under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar.

PUBLIC

4. This Article shall not apply to schemes listed in of Annex SSC-2.

ARTICLE SSC.51

Award of a supplement

1. A recipient of benefits to whom this Chapter applies may not, in either the Kingdom of Spain, where the Kingdom of Spain is the place of residence and under which legislation a benefit is payable to them, or in Gibraltar, where Gibraltar is the place of residence and where under the legislation of the United Kingdom, in respect of Gibraltar, a benefit is payable to them, be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance equal to all the periods taken into account for the payment in accordance with this Chapter.

2. The competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall pay them throughout the period of their residence in the Kingdom of Spain or Gibraltar, respectively, a supplement equal to the difference between the total of the benefits due under this Chapter and the amount of the minimum benefit.

PUBLIC

ARTICLE SSC.52

Recalculation and revaluation of benefits

1. If the method for determining benefits or the rules for calculating benefits are altered under the legislation of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, 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 SSC.45.

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 Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, 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 SSC.45, without the need for a recalculation.

ARTICLE SSC.53

Special provisions for civil servants

1. Articles SSC.7, SSC.43, SSC.44(3) and SSC.45 to SSC.52 shall apply *mutatis mutandis* to persons covered by a special scheme for civil servants.

PUBLIC

2. However, if the legislation of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, makes the acquisition, liquidation, retention or recovery of the right to benefits under a special scheme for civil servants subject to the condition that all periods of insurance be completed under one or more special schemes for civil servants in the Kingdom of Spain or in Gibraltar, or be regarded by the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, as equivalent to such periods, the competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall take into account only the periods which can be recognised under the legislation it applies. If, account having been taken of the periods thus completed, the person concerned does not satisfy the conditions for the receipt of these benefits, these periods shall be taken into account for the award of benefits under the general scheme or, failing that, the scheme applicable to manual or clerical workers, as the case may be.

3. Where, under the legislation of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, benefits under a special scheme for civil servants are calculated on the basis of the last salary or salaries received during a reference period, the competent institution of the Kingdom of Spain or of the United Kingdom, in respect of Gibraltar, shall take into account, for the purposes of the calculation, only those salaries, duly revalued, which were received during the period or periods for which the person concerned was subject to that legislation.

PUBLIC

CHAPTER 6

UNEMPLOYMENT BENEFITS

ARTICLE SSC.54

Special provisions on aggregation of periods of insurance, employment or self-employment

1. The competent institution of either the Kingdom of Spain where the legislation of the Kingdom of Spain 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 or of the United Kingdom, in respect of Gibraltar, where the legislation of the United Kingdom in respect of Gibraltar 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 or employment or self-employment completed under the legislation of respectively the United Kingdom, in respect of Gibraltar or the Kingdom of Spain or 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, of employment or self-employment, such periods completed under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, 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.

PUBLIC

2. The application of paragraph 1 of this Article shall be conditional on the person concerned having 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;

(c) periods of self-employment, if that legislation requires periods of self-employment.

PUBLIC

ARTICLE SSC.55

Calculation of unemployment benefits

1. Where the calculation of unemployment benefits is based on the amount of the previous salary or professional income of the person concerned, the Kingdom of Spain, where the Kingdom of Spain is competent, or the United Kingdom, in respect of Gibraltar, where the United Kingdom, in respect of Gibraltar, is competent, shall take into account the salary or professional income received by the person concerned based exclusively on their last activity as an employed or self-employed person under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, that is competent.

2. Where the Kingdom of Spain is competent and the legislation applied by the Kingdom of Spain provides for a specific reference period for the determination of the salary or professional income used to calculate the amount of benefit, and the person concerned was subject to the legislation of the United Kingdom, in respect of Gibraltar, for all or part of that reference period, the Kingdom of Spain shall only take into account the salary or professional income received during their last activity as an employed or self-employed person under that legislation. Where the United Kingdom, in respect of Gibraltar, is competent and the legislation applied by the United Kingdom, in respect of Gibraltar, provides for a specific reference period for the determination of the salary or professional income used to calculate the amount of benefit, and the person concerned was subject to the legislation of the Kingdom of Spain, the United Kingdom, in respect of Gibraltar, shall only take into account the salary or professional income received during their last activity as an employed or self-employed person under that legislation.

ARTICLE SSC.56

Unemployed persons who resided in the Kingdom of Spain,
when the United Kingdom, in respect of Gibraltar, is competent,
or in Gibraltar, when the Kingdom of Spain is competent

1. Persons who become wholly, partially or intermittently unemployed and during their last activity as an employed or self-employed person in Gibraltar, resided in the Kingdom of Spain and who continue to reside in the Kingdom of Spain shall make themselves available to the employment services in Gibraltar. They shall receive benefits in accordance with the legislation of Gibraltar as if they were residing there. These benefits shall be provided by the institution of Gibraltar.

PUBLIC

Persons who become wholly, partially or intermittently unemployed and during their last activity as an employed or self-employed person in the Kingdom of Spain, resided in Gibraltar and who continue to reside in Gibraltar shall make themselves available to the employment services in the Kingdom of Spain. They shall receive benefits in accordance with the legislation of the Kingdom of Spain as if they were residing there. These benefits shall be provided by the institution of the Kingdom of Spain.

Unemployment benefits may be payable in a lump sum.

2. Persons who are wholly unemployed may, as a complementary step, make themselves available to the competent employment services of the Kingdom of Spain if they reside in the Kingdom of Spain or Gibraltar if they reside in Gibraltar.

Persons who are wholly unemployed who pursued their last activity as an employed or self-employed person in Gibraltar and resides in the Kingdom of Spain, or who pursued their last activity as an employed or self-employed person in the Kingdom of Spain and reside in Gibraltar, may additionally apply for any supplementary unemployment benefits which may be available under Spanish legislation, as if they had been subject to that legislation during their last period of activity or the legislation of the United Kingdom, in respect of Gibraltar, as if they had been subject to that legislation during their last period of activity.

PUBLIC

3. Persons referred to in paragraph 2 who are registered as a person seeking work with the competent employment services of the Kingdom of Spain where they reside in the Kingdom of Spain or Gibraltar where they reside in Gibraltar, shall be subject to the control procedure organised in either the Kingdom of Spain or Gibraltar, as the case may be, and shall adhere to the conditions laid down under the legislation applicable in the Kingdom of Spain where they reside in the Kingdom of Spain or Gibraltar where they reside in Gibraltar. Insofar as that person remains registered as a person seeking work in their place of last activity, that person shall comply with the obligations applicable.

4. The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall adopt the necessary arrangements for the implementation of this Article, in particular as regards lump-sum payments where applicable, as well as the arrangements for exchanges of information, cooperation and mutual assistance between the institutions and services of the Kingdom of Spain, and of the United Kingdom, in respect of Gibraltar.

Regarding the exchange of information, the documentation about the periods of insured activity and benefits, this will be facilitated by the competent institution of the place of employment efficiently and without undue delay, in order not to affect the recognition, sustainment, suspension, termination or resumption of the benefits.

PUBLIC

CHAPTER 7

PRE-RETIREMENT BENEFITS

ARTICLE SSC.57

Benefits

When the applicable legislation makes the right to pre-retirement benefits conditional on the completion of periods of insurance, of employment, Article SSC.7 shall not apply.

CHAPTER 8

FAMILY BENEFITS

ARTICLE SSC.58

Members of the family residing in the Kingdom of Spain or in Gibraltar

1. A person to whom this Protocol applies shall be entitled to family benefits in accordance with the legislation of the Kingdom of Spain, where the Kingdom of Spain is competent, including for their members of the family residing in Gibraltar as if they were residing in the Kingdom of Spain.

PUBLIC

2. A person to whom this Protocol applies shall be entitled to family benefits in accordance with the legislation of the United Kingdom, in respect of Gibraltar, where the United Kingdom, in respect of Gibraltar, is competent, including for their members of the family residing in the Kingdom of Spain as if they were residing in Gibraltar.

3. Pensioners residing either in the Kingdom of Spain or Gibraltar shall be entitled for the members of their family residing respectively in Gibraltar or the Kingdom of Spain to family benefits in accordance with the legislation applied by the institution which is competent for their pension.

PUBLIC

ARTICLE SSC.59

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 both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, the following priority rules shall apply:

(a) in the case of benefits payable by both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, on a different basis, the order of priority shall be as follows: firstly, rights available on the basis of an activity as employed or self-employed person, secondly, rights available on the basis of the receipt of a pension and finally, rights obtained on the basis of residence;

(b) in the case of benefits payable by both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, on the same basis, the order of priority shall be established by referring to the following subsidiary criteria:

(i) 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 is provided for by the conflicting legislations. In the latter case, the cost of the benefits shall be shared in accordance with the criteria laid down in Annex to the Protocol on Social Security Coordination;

(ii) 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 under the conflicting legislations.

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 the other conflicting legislation 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 when the entitlement to the benefits in question is based on residence only.

PUBLIC

3. If, under Article SSC.57, an application for family benefits is submitted to the competent institution of either the Kingdom of Spain, whose legislation is applicable, or of the United Kingdom, in respect of Gibraltar, whose legislation is applicable, but not by priority in accordance with paragraphs 1 and 2 of this Article:

(a) that institution shall forward the application to the competent institution of either the Kingdom of Spain, whose legislation is applicable by priority, or the United Kingdom, in respect of Gibraltar, whose legislation, is applicable by priority, inform the person concerned and, without prejudice to the provisions of the Annex concerning the provisional award of benefits, provide, if necessary, the differential supplement mentioned in paragraph 2;

(b) the competent institution of either the Kingdom of Spain, whose legislation is applicable by priority, or the United Kingdom, in respect of Gibraltar, 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 application was submitted to the first institution shall be considered as the date of its claim to the institution with priority.

PUBLIC

ARTICLE SSC.60

Provision of benefits

In the event that family benefits are not used by the person to whom they should be provided for the maintenance of the members of the family, the competent institution shall discharge its legal obligations by providing those benefits to the natural or legal person in fact maintaining the members of the family, at the request and through the agency of the institution of the place of residence either in the Kingdom of Spain or in Gibraltar or of the designated institution or body appointed for that purpose by the competent authority of the place of residence in either the Kingdom of Spain or Gibraltar.

PUBLIC

ARTICLE SSC.61

Additional provisions

1. If, under the legislation designated by virtue of Articles SSC.57 and SSC.58, no right is acquired to the payment of additional or special family benefits for orphans, such benefits shall be paid by default, and in addition to other family benefits acquired in accordance with the abovementioned legislation, under the legislation of either the Kingdom of Spain, where the deceased worker was subject for the longest periods of time to the legislation of the Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, where the deceased worker was subject for the longest periods of time to the legislation of the United Kingdom, in respect of Gibraltar, insofar as the right was acquired under that legislation. If no right was acquired under that legislation, the conditions for the acquisition of such right under the legislation of either the Kingdom of Spain, where no right was acquired under the legislation of the United Kingdom, in respect of Gibraltar, or the United Kingdom, in respect of Gibraltar, where no right was acquired under the legislation of the Kingdom of Spain, shall be examined and benefits provided in decreasing order of the length of periods of insurance completed under the legislation of either the Kingdom of Spain, where no right was acquired under the legislation of the United Kingdom, in respect of Gibraltar, or the United Kingdom, in respect of Gibraltar, where no right was acquired under the legislation of the Kingdom of Spain.

2. Benefits paid in the form of pensions or supplements to pensions shall be provided and calculated in accordance with Chapter 5.

PUBLIC

TITLE IV

MISCELLANEOUS PROVISIONS

ARTICLE SSC.62

Cooperation

1. The competent authorities of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall notify the Specialised Committee on the Circulation of Persons of any changes to their legislation as regards the branches of social security covered by Article SSC.4 which are relevant to or may affect the implementation of this Protocol.

2. Unless this Protocol requires such information to be notified to the Specialised Committee on the Circulation of Persons, the competent authorities of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall communicate to each other measures taken to implement this Protocol that are not notified under paragraph 1 and that are relevant for the implementation of this Protocol.

3. For the purposes of this Protocol, the authorities and institutions of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall lend one another their good offices and act as though implementing their own legislation. The administrative assistance given by those authorities and institutions shall, as a rule, be free of charge. However, the Specialised Committee on the Circulation of Persons shall establish the nature of reimbursable expenses and the limits above which their reimbursement is due.

PUBLIC

4. The authorities and institutions of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, may, for the purposes of this Title, communicate directly with one another and with the persons involved or their representatives.

5. The institutions and persons covered by this Protocol shall have a duty of mutual information and cooperation to ensure the correct implementation of this Protocol. An Administrative Arrangement between the authorities directly involved of both the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall determine the means and procedures to carry out the duty of cooperation on the issuance of documentation, exchange of information, resolution of conflicts, and introduction and settlement of claims.

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 Protocol.

The persons concerned must inform the competent institutions of either the Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, and institutions of the place of residence, as soon as possible of any change in their personal or family situation which affects their right to benefits under this Protocol.

6. Failure to respect the obligation of information referred to in the third subparagraph of paragraph 5 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 Protocol.

PUBLIC

7. In the event of difficulties in the interpretation or application of this Protocol which could jeopardise the rights of a person covered by it, the competent institution or the institution of the place of residence shall contact the institution(s) of the Kingdom of Spain, where the Kingdom of Spain is concerned, or the United Kingdom, in respect of Gibraltar, where the United Kingdom, in respect of Gibraltar, is concerned. If a solution cannot be found within a reasonable period, a Party may request to hold consultations in the framework of the Specialised Committee on the Circulation of Persons.

8. The authorities, institutions and tribunals of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, may not reject applications or other documents submitted to them on the grounds that they are written in an official language of the Union, including in English.

ARTICLE SSC.63

Data processing

1. The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall progressively use new technologies for the exchange, access and processing of the data required to apply this Protocol.

2. The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, each shall be responsible for managing their own part of the data-processing services.

PUBLIC

3. An electronic document sent or issued by an institution in conformity with this Protocol, the Annex to the Protocol on Social Security Coordination and the Administrative Arrangement may not be rejected by any authority or institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, 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.

PUBLIC

ARTICLE SSC.64

Exemptions

1. Any exemption from or reduction of taxes, stamp duty, notarial or registration fees provided for under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, in respect of certificates or documents required to be produced in application of the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, respectively shall be extended to similar certificates or documents required to be produced in application of the legislation of either the Kingdom of Spain, where the exemption is provided under the legislation of the United Kingdom, in respect of Gibraltar, or the United Kingdom, in respect of Gibraltar, where the exemption is provided under the legislation of the Kingdom of Spain, or of this Protocol.

2. All statements, documents and certificates of any kind whatsoever required to be produced in application of this Protocol shall be exempt from authentication by diplomatic or consular authorities.

PUBLIC

ARTICLE SSC.65

Claims, declarations or appeals

Any claim, declaration or appeal which should have been submitted, in application of the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, within a specified period to an authority, institution or tribunal of respectively the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall be admissible if it is submitted within the same period to a corresponding authority, institution or tribunal of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar. 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 Kingdom of Spain or the United Kingdom, in respect of Gibraltar, either directly or through the competent authorities concerned. The date on which such claims, declarations or appeals were submitted to the authority, institution or tribunal of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall be considered as the date of their submission to the competent authority, institution or tribunal.

ARTICLE SSC.66

Medical examinations

1. Medical examinations provided for by the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, may be carried out, at the request of the competent institution, in the territory of the Kingdom of Spain or in Gibraltar, by the institution of the place of stay or residence of the claimant or the person entitled to benefits, under the conditions laid down in the Annex to the Protocol on Social Security Coordination.

PUBLIC

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 Kingdom of Spain or Gibraltar.

PUBLIC

ARTICLE SSC.67

Collection of contributions and recovery of benefits

1. Collection of contributions due to an institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, and recovery of benefits provided by the institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, but not due, may be effected in the Kingdom of Spain or Gibraltar 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 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 the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall be recognised and enforced at the request of the competent institution in the Kingdom of Spain or Gibraltar 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. Such decisions shall be declared enforceable in the Kingdom of Spain or Gibraltar insofar as the legislation and any other procedures of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, so require.

3. Claims of an institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall in enforcement, bankruptcy or settlement proceedings in the Kingdom of Spain, in the case of claims of an institution of the United Kingdom, in respect of Gibraltar, or Gibraltar, in the case of claims of an institution of the Kingdom of Spain, enjoy the same privileges as the legislation that the latter accords to claims of the same kind.

4. The procedure for implementing this Article, including costs reimbursement, shall be governed by the Annex to the Protocol on Social Security Coordination or, where necessary and as a complementary measure, by means of administrative arrangements between the Kingdom of Spain and the United Kingdom, in respect of Gibraltar.

PUBLIC

ARTICLE SSC.68

Rights of institutions

1. If a person receives benefits under the legislation of either the Kingdom of Spain, in respect of an injury resulting from events occurring in Gibraltar, or the United Kingdom, in respect of Gibraltar, in respect of an injury resulting from events occurring in the Kingdom of Spain, 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 the Kingdom of Spain and the United Kingdom, in respect of Gibraltar;

(b) where the institution responsible for providing benefits has a direct right against the third party, the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall recognise such rights.

2. If a person receives benefits under the legislation of either the Kingdom of Spain, in respect of an injury resulting from events occurring in Gibraltar, or the United Kingdom, in respect of Gibraltar, in respect of an injury resulting from events occurring in the Kingdom of Spain, 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 Articles SSC.27(3) and SSC.33(2) the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, or their competent authorities have concluded an agreement to waive reimbursement between them, 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 Kingdom of Spain, where the residence or stay is in the Kingdom of Spain, or of the United Kingdom, in respect of Gibraltar, where the residence or stay is in Gibraltar, grants 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;

PUBLIC

(b) for the application of subparagraph 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.

PUBLIC

ARTICLE SSC.69

Implementation of legislation

Special provisions for implementing the legislation applicable in the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, are referred to in Annex SSC-4.

TITLE V

FINAL PROVISIONS

PUBLIC

ARTICLE SSC.70

Protection of individual rights

1. The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall ensure in accordance with their domestic legal orders that the provisions of the Protocol on Social Security Coordination have the force of law, either directly or through domestic legislation giving effect to those provisions, so that legal or natural persons can invoke those provisions before domestic courts, tribunals and administrative authorities.

2. The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall ensure the means for legal and natural persons to effectively protect their rights under this Protocol, such as the possibility to address complaints to administrative bodies or to bring legal action before a competent court or tribunal in an appropriate judicial procedure, in order to seek an adequate and timely remedy.

ARTICLE SSC.71

Transitional provision

1. No rights shall be acquired pursuant to this Protocol for the period before its date of application.

2. Any period of insurance and, where appropriate, any period of employment or self-employment completed under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, prior to the date of application of this Protocol shall be taken into consideration for the determination of rights acquired under this Protocol.

3. Subject to paragraph 1, a right shall be acquired under this Protocol even if it relates to a contingency arising before its date of application.

4. Any benefit which has not been awarded or which has been suspended by reason of the nationality or place of residence of the person concerned shall, at the request of that person, be provided or resumed with effect from the date of application of this Protocol, provided that the rights for which benefits were previously provided have not given rise to a lump-sum payment.

5. The rights of a person to whom a pension was provided prior to the date of application of this Protocol in the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, may, at the request of the person concerned, be reviewed, taking into account this Protocol.

6. If a request referred to in paragraph 4 or 5 is submitted within two years from the date of application of this Protocol, the rights acquired in accordance with this Protocol shall have effect from that date, and the legislation of the Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, as the case may be, concerning the forfeiture or limitation of rights, may not be invoked against the persons concerned.

PUBLIC

7. If a request referred to in paragraph 4 or 5 is submitted after the expiry of the two-year period following the date of application of this Protocol, rights not forfeited or not time-barred shall have effect from the date on which the request was submitted, subject to any more favourable provisions under the legislation of the Kingdom of Spain, or the United Kingdom, in respect of Gibraltar, as the case may be.

PUBLIC

ARTICLE SSC.72

Amendments

The Specialised Committee on the Circulation of Persons may amend the Annexes to this Protocol.

ANNEX 32

PUBLIC

ADVANCES OF MAINTENANCE PAYMENTS
AND SPECIAL CHILDBIRTH AND ADOPTION ALLOWANCES
AS REFERRED TO IN ARTICLE SSC.1(29)

I. Advances of maintenance payments

KINGDOM OF SPAIN

Advances of maintenance payments under the Royal Decree 1618/2007 of 7 December 2007.

UNITED KINGDOM, IN RESPECT OF GIBRALTAR

Not applicable.

II. Special childbirth and adoption allowances

KINGDOM OF SPAIN

Not applicable.

UNITED KINGDOM, IN RESPECT OF GIBRALTAR

Maternity grant under Section 11 of the Gibraltar Social Security (Insurance) Act 1955.

ANNEX 33

PUBLIC

CASES IN WHICH THE PRO RATA CALCULATION
SHALL BE WAIVED OR SHALL NOT APPLY
AS REFERRED TO IN ARTICLE SSC.45

Part 1

Cases in which the pro rata calculation shall be waived
pursuant to Article 45(4) of the Protocol

KINGDOM OF SPAIN

Not applicable.

UNITED KINGDOM, IN RESPECT OF GIBRALTAR

Not applicable.

Part 2

Cases in which SSC.45(5) of the Protocol applies

KINGDOM OF SPAIN

Not applicable.

UNITED KINGDOM, IN RESPECT OF GIBRALTAR

Not applicable.

PUBLIC

ANNEX 34

PUBLIC

BENEFITS AND AGREEMENTS
WHICH ALLOW THE APPLICATION OF ARTICLE SSC.47

I. Benefits referred to in Article 47(2)(a) of the Protocol, the amount of which is independent of the length of periods of insurance or residence completed.

KINGDOM OF SPAIN

Survivors' pensions granted under the general and special schemes, with the exception of the Special Scheme for Civil Servants.

UNITED KINGDOM, IN RESPECT OF GIBRALTAR

Survivor's bereavement allowance, widowed parent's allowance and survivor's pension under the Gibraltar Social Security (Open Long-Term Benefits Scheme) Act 1997 and the Gibraltar Social Security (Closed Long-Term Benefits and Scheme) Act 1996.

Disablement pension and death benefit under the Gibraltar Social Security (Employment Injuries Insurance) Act 1952.

II. Benefits referred to in Article 47(2)(b) of the Protocol, the amount of which is determined by reference to a credited period deemed to have been completed between the date on which the risk materialised and a later date.

KINGDOM OF SPAIN

Not applicable.

UNITED KINGDOM, IN RESPECT OF GIBRALTAR

Not applicable.

III. Agreements referred to in Article 47(2)(b)(i) of the Protocol intended to prevent the same credited period being taken into account more than once:

No such agreements have been concluded.

PUBLIC

PUBLIC

SPECIAL PROVISIONS FOR THE APPLICATION
OF THE LEGISLATION OF THE UNITED KINGDOM,
IN RESPECT OF GIBRALTAR, OR SPAIN

(Articles SSC.44(3), SSC.49(1) and SSC.69)

(Equivalent of Annex XI of Regulation 883/2004)

KINGDOM OF SPAIN

1. For the purposes of implementing Article SSC.45(1)(b)(i) of this Protocol, the years which the worker lacks to reach the pensionable or compulsory retirement age as stipulated under Article 31(4) of the consolidated version of the Ley de Clases Pasivas del Estado (Law on State Pensioners) shall be taken into account as actual years of service to the State only if at the time of the event in respect of which invalidity or death pensions are due, the beneficiary was covered by the Kingdom of Spain's special scheme for civil servants or was performing an activity assimilated under the scheme, or if, at the time of the event in respect of which the pensions are due, the beneficiary was performing an activity that would have required the person concerned to be included under the State's special scheme for civil servants, the armed forces or the judiciary, had the activity been performed in the Kingdom of Spain.

2. (a) Under Article SSC.49(1)(c) of this Protocol, the calculation of the theoretical Spanish Benefit shall be carried out on the basis of the actual contributions of the person during the years immediately preceding payment of the last contribution to Spanish social security. Where, in the calculation of the basic amount for the pension, periods of insurance and/or residence under the legislation of United Kingdom, in respect of Gibraltar, have to be taken into account, the contribution basis in the Kingdom of Spain which is closest in time to the reference periods shall be used for the aforementioned periods, taking into account the development of the retail price index.

(b) The amount of the pension obtained shall be increased by the amount of the increases and revaluations calculated for each subsequent year for pensions of the same nature.

3. Periods completed in Gibraltar which must be calculated in the special scheme for civil servants, the armed forces and the judicial administration, will be treated in the same way, for the purposes of Article SSC.49 of this Protocol, as the periods closest in time covered as a civil servant in Spain.

PUBLIC

4. The additional amounts based on age referred to in the Second Transitional Provision of the General Law on Social Security shall be applicable to all beneficiaries of the Protocol who have contributions to their name under the Spanish legislation prior to 1 January 1967; it shall not be possible, by application of Article SSC.6 of this Protocol, to treat periods of insurance credited in Gibraltar prior to the aforementioned date as being the same as contributions paid in the Kingdom of Spain, solely for the present purposes. The date corresponding to 1 January 1967 shall be 1 August 1970 for the Special Scheme for Seafarers and 1 April 1969 for the Special Social Security Scheme for Coal Mining.

UNITED KINGDOM, IN RESPECT OF GIBRALTAR

There are no special provisions relevant, for the purposes of this Annex, for the application of the legislation of the United Kingdom, in respect of Gibraltar.

PUBLIC

ANNEX 36

PUBLIC

IMPLEMENTING ANNEX
TO PROTOCOL ON SOCIAL SECURITY COORDINATION

TITLE I

GENERAL PROVISIONS

CHAPTER I

DEFINITIONS

ARTICLE SSCI.1

Definitions

1. For the purposes of this Annex, the definitions set out in Article SSC.1 shall apply.

2. In addition to the definitions referred to in paragraph 1,

(a) "access point" means an entity providing:

(i) an electronic contact point;

(ii) automatic routing based on the address; and

(iii) intelligent routing based on software that enables automatic checking and routing (for example, an artificial intelligence application) and/or human intervention;

(b) "document" means a set of data, irrespective of the medium used, structured in such a way that it can be exchanged electronically and which must be communicated in order to enable the operation of the Protocol on Social Security Coordination and this Annex;

(c) "liaison body" means any body notified by the competent authority of the Kingdom of Spain or the United Kingdom in respect of Gibraltar for one or more of the branches of social security referred to in Article SSC.4 to respond to requests for information and assistance for the purposes of the application of the Protocol on Social Security Coordination and this Annex and which has to fulfil the tasks assigned to it under Title IV of this Annex;

(d) "Structured Electronic Document" means any structured document in a format designed for the electronic exchange of information between the Kingdom of Spain and the United Kingdom in respect of Gibraltar;

(e) "transmission by electronic means" means the transmission of data using electronic equipment for the processing (including digital compression) of data and employing wires, radio transmission, optical technologies or any other electromagnetic means.

PUBLIC

CHAPTER II

PROVISIONS CONCERNING COOPERATION AND EXCHANGES OF DATA

PUBLIC

ARTICLE SSCI.2

Scope and rules for exchanges between institutions

1. For the purposes of this Annex, exchanges between authorities and institutions of the Kingdom of Spain and the United Kingdom in respect of Gibraltar and persons covered by the Protocol on Social Security Coordination shall be based on the principles of public service, efficiency, active assistance, rapid delivery and accessibility, including e-accessibility, in particular for the disabled and the elderly.

2. The institutions shall without delay provide or exchange all data necessary for establishing and determining the rights and obligations of persons to whom the Protocol on Social Security Coordination applies. Such data shall be transferred between the Kingdom of Spain and the United Kingdom in respect of Gibraltar directly by the institutions themselves or indirectly via the liaison bodies.

3. Where a person has mistakenly submitted information, documents or claims to an institution across the border in the territory of the Kingdom of Spain or the United Kingdom in respect of Gibraltar but which is not the institution designated in accordance with this Annex, the information, documents or claims shall be resubmitted without delay by the former institution to the institution designated in accordance with this Annex, indicating the date on which they were initially submitted. That date shall be binding on the latter institution. The institutions of the Kingdom of Spain and the United Kingdom in respect of Gibraltar shall not, however, be held liable, or be deemed to have taken a decision by virtue of their failure to act as a result of the late transmission of information, documents or claims by the institutions of the United Kingdom in respect of Gibraltar and the Kingdom of Spain respectively.

4. Where data are transferred indirectly via the liaison body of the place of destination, time limits for responding to claims shall start from the date when that liaison body received the claim, as if it had been received by the institution of the Kingdom of Spain or the United Kingdom in respect of Gibraltar.

ARTICLE SSCI.3

Scope and rules for exchanges between the persons concerned and institutions

1. The Kingdom of Spain and the United Kingdom in respect of Gibraltar shall ensure that the necessary information is made available to the persons concerned in order to inform them of the changes introduced by the Protocol on Social Security Coordination and by this Annex to enable them to assert their rights. They shall also provide for user friendly services.

PUBLIC

2. Persons to whom the Protocol on Social Security Coordination applies shall be required to forward to the relevant institution the information, documents or supporting evidence necessary to establish their situation or that of their families, to establish or maintain their rights and obligations and to determine the applicable legislation and their obligations under it.

3. To the extent necessary for the application of the Protocol on Social Security Coordination and this Annex, the relevant institutions shall forward the information and issue the documents to the persons concerned without delay and in all cases within the time limits specified under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever is concerned.

The relevant institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall notify the claimant residing or staying in Gibraltar or the Kingdom of Spain respectively of its decision directly or through the liaison body of the place of residence or stay. When refusing the benefits, it shall also indicate the reasons for refusal, the remedies and periods allowed for appeals. A copy of this decision shall be sent to other involved institutions.

ARTICLE SSCI.4

Forms, documents and methods of exchanging data

1. Subject to paragraph 2, the structure, content and format of forms and documents issued on behalf of the Kingdom of Spain and the United Kingdom in respect of Gibraltar for the purposes of implementing this Annex shall be agreed by the competent authorities of the Kingdom of Spain and of the United Kingdom, in respect of Gibraltar.

PUBLIC

2. For an interim period, the end date of which shall be agreed by the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, all forms and documents issued by the competent institutions in the format used immediately before the Protocol on Social Security Coordination comes into force shall be valid for the purposes of implementing the Protocol on Social Security Coordination and, where appropriate, shall continue to be used for the exchange of information between competent institutions. All such forms and documents issued before and during that interim period shall be valid until their expiry or cancellation. The forms and documents valid in accordance with this paragraph include portable documents which certify a person's social security situation as required to give effect to the Protocol on Social Security Coordination.

3. The transmission of data between the institutions or the liaison bodies may be carried out via the Electronic Exchange of Social Security Information. To the extent the forms and documents referred to in paragraph 1 are exchanged via the Electronic Exchange of Social Security Information, they shall respect the rules applicable to that system.

4. Where the transmission of data between institutions or the liaison bodies is carried out via the Electronic Exchange of Social Security Information, the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, will bear the related costs.

5. Where the transmission of data between institutions or the liaison bodies is not carried out via the Electronic Exchange of Social Security Information, the relevant institutions and liaison bodies shall use the arrangements appropriate to each case, and favour the use of electronic means as far as possible.

6. In their communications with the persons concerned, the relevant institutions shall use the arrangements appropriate to each case and favour the use of electronic means as far as possible.

PUBLIC

ARTICLE SSCI.5

Legal value of documents and supporting evidence
issued in the Kingdom of Spain and the United Kingdom
in respect of Gibraltar

PUBLIC

1. Documents issued by the institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, and showing the position of a person for the purposes of the application of the Protocol on Social Security Coordination and this Annex, and supporting evidence on the basis of which the documents have been issued, shall be accepted by the institutions of the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain respectively for as long as they have not been withdrawn or declared to be invalid by the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever issued them.

2. Where there is doubt about the validity of a document or the accuracy of the facts on which the particulars contained therein are based, the relevant institution that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal of that document. The issuing institution shall reconsider the grounds for issuing the document and, if necessary, withdraw it.

3. Pursuant to paragraph 2, where there is doubt about the information provided by the persons concerned, the validity of a document or supporting evidence or the accuracy of the facts on which the particulars contained therein are based, the institution of the place of stay or residence shall, insofar as this is possible, at the request of the competent institution, proceed to the necessary verification of this information or document.

ARTICLE SSCI.6

Provisional application of legislation and provisional granting of benefits

1. Unless otherwise provided for in this Annex, where there is a difference of views between the institutions or authorities of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, concerning the determination of the applicable legislation, the person concerned shall be made provisionally subject to the legislation of one of them, the order of priority being determined as follows:

(a) the legislation of the place where the person actually pursues their employment or self-employment, if the employment or self-employment is pursued in only one place;

(b) the legislation of the place of residence if the person concerned pursues employment or self-employment in both the Kingdom of Spain and Gibraltar;

(c) in all other cases, the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, the application of whichever was first requested if the person pursues an activity, or activities, in both the Kingdom of Spain and Gibraltar.

2. Where there is a difference of views between the institutions or authorities of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, about which institution should provide the benefits in cash or in kind, the person concerned who could claim benefits if there was no dispute shall be entitled, on a provisional basis, to the benefits provided for by the legislation applied by the institution of that person's place of residence.

PUBLIC

3. Where it is established either that the applicable legislation is not that of the place of provisional membership or the institution which granted the benefits on a provisional basis was not the competent institution, the institution identified as being competent shall be deemed retroactively to have been so, as if that difference of views had not existed, at the latest from either the date of provisional membership or of the first provisional granting of the benefits concerned.

4. If necessary, the institution identified as being competent and the institution which provisionally paid the cash benefits or provisionally received contributions shall settle the financial situation of the person concerned as regards contributions and cash benefits paid provisionally, where appropriate, in accordance with Title IV of this Annex.

Benefits in kind granted provisionally by an institution in accordance with paragraph 2 shall be reimbursed by the competent institution in accordance with Title IV of this Annex.

ARTICLE SSCI.7

Provisional calculation of benefits and contributions

1. Unless otherwise provided for in this Annex, where a person is eligible for a benefit, or is liable to pay a contribution in accordance with the Protocol, and the competent institution does not have all the information concerning the situation in Gibraltar, where the Kingdom of Spain is competent, or in the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent, which is necessary to calculate definitively the amount of that benefit or contribution, that institution shall, on request of the person concerned, award this benefit or calculate this contribution on a provisional basis, if such a calculation is possible on the basis of the information at the disposal of that institution.

2. The benefit or the contribution concerned shall be recalculated once all the necessary supporting evidence or documents are provided to the institution concerned.

PUBLIC

CHAPTER III

OTHER GENERAL PROVISIONS FOR THE APPLICATION OF THE PROTOCOL ON SOCIAL SECURITY COORDINATION

ARTICLE SSCI.8

Other procedures between authorities and institutions

The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, or their competent authorities may agree procedures other than those provided for by this Annex, provided that such procedures do not adversely affect the rights or obligations of the persons concerned.

ARTICLE SSCI.9

Prevention of overlapping of benefits

Notwithstanding other provisions in the Protocol on Social Security Coordination, when benefits due under the legislation of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, are mutually reduced, suspended or withdrawn, any amounts that would not be paid in the event of strict application of the rules concerning reduction, suspension or withdrawal laid down by the legislation of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, whichever is concerned, shall be divided by the number of benefits subject to reduction, suspension or withdrawal.

ARTICLE SSCI.10

Aggregation of periods

1. For the purposes of applying Article SSC.7, the competent institution shall contact the institution to whose legislation the person concerned has been subject previously in order to determine all the periods completed under its legislation.

2. The respective periods of insurance, employment or self-employment completed under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall be added to those completed under the legislation the competent institution applies, insofar as necessary for the purposes of applying Article SSC.7, provided that these periods do not overlap.

PUBLIC

3. Where a period of insurance which is completed in accordance with compulsory insurance under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, coincides with a period of insurance completed on the basis of voluntary insurance or continued optional insurance under the legislation of either the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain, only the period completed on the basis of compulsory insurance shall be taken into account.

4. Where a period of insurance other than an equivalent period completed under the legislation of The Kingdom of Spain or the United Kingdom, in respect of Gibraltar, coincides with an equivalent period on the basis of the legislation of either the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain, only the period other than an equivalent period shall be taken into account.

5. Any period regarded as equivalent under the legislation of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall be taken into account only by the institution applying the legislation the person concerned was last compulsorily subject to before that period. In the event that the person concerned was not compulsorily subject to the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, before that period, the latter shall be taken into account by the institution applying the legislation the person concerned was compulsorily subject to for the first time after that period.

6. In the event that the time in which certain periods of insurance were completed under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, cannot be determined precisely, it shall be presumed that these periods do not overlap with periods of insurance completed under the legislation of the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain respectively, and account shall be taken thereof, where advantageous to the person concerned, insofar as they can reasonably be taken into consideration.

PUBLIC

ARTICLE SSCI.11

Rules for the conversion of periods

1. Where periods completed under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, are expressed in units different from those provided for by the legislation of the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain, the conversion needed for the purpose of aggregation under Article SSC.7 shall be carried out under the following rules:

(a) the period to be used as the basis for the conversion shall be that communicated by the institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, under whose legislation the period was completed;

(b) in the case of schemes where the periods are expressed in days the conversion from days to other units, and vice versa, as well as between different schemes based on days shall be calculated according to the following table:

Scheme based on	1 day corresponds to	1 week corresponds to	1 month corresponds to	1 quarter corresponds to	Maximum of days in one calendar year
5 days	9 hours	5 days	22 days	66 days	264 days
6 days	8 hours	6 days	26 days	78 days	312 days
7 days	6 hours	7 days	30 days	90 days	360 days

(c) in the case of schemes where the periods are expressed in units other than days,

(i) three months or 13 weeks shall be equivalent to one quarter, and vice versa;

PUBLIC

(ii) one year shall be equivalent to four quarters, 12 months or 52 weeks, and vice versa;

(iii) for the conversion of weeks into months, and vice versa, weeks and months shall be converted into days in accordance with the conversion rules for the schemes based on six days in the table in subparagraph (b);

(d) in the case of periods expressed in fractions, those figures shall be converted into the next smaller integer unit applying the rules laid down in subparagraphs (b) and (c). Fractions of years shall be converted into months unless the scheme involved is based on quarters;

(e) if the conversion under this paragraph results in a fraction of a unit, the next higher integer unit shall be taken as the result of the conversion under this paragraph.

2. The application of paragraph 1 shall not have the effect of producing, for the total sum of the periods completed during one calendar year, a total exceeding the number of days indicated in the last column in the table in paragraph 1(b), 52 weeks, 12 months or four quarters. If the periods to be converted correspond to the maximum annual amount of periods under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, in which they have been completed, the application of paragraph 1 shall not result within one calendar year in periods that are shorter than the possible maximum annual amount of periods provided under the legislation concerned.

3. The conversion shall be carried out either in one single operation covering all those periods which were communicated as an aggregate, or for each year, if the periods were communicated on a year-by-year basis.

4. Where an institution communicates periods expressed in days, it shall at the same time indicate whether the scheme it administers is based on five days, six days or seven days.

PUBLIC

TITLE II

DETERMINATION OF THE LEGISLATION APPLICABLE

ARTICLE SSCI.12

Details relating to Articles SSC.11, SSC.12 and SSC.13

1. For the purposes of the application of Article SSC.11(1) and (2), and Article SSC.12, the words "which normally carries out its activities there" shall refer to an employer that ordinarily performs substantial activities, other than purely internal management activities, in the territory of Gibraltar or the Kingdom of Spain in which it is established, taking account of all criteria characterising the activities carried out by the undertaking in question. The relevant criteria must be suited to the specific characteristics of each employer and the real nature of the activities carried out.

2. For the purposes of the application of Article SSC.11(3) and (4), the words "who normally pursues an activity as a self-employed frontier worker" shall refer to a person who habitually carries out substantial activities in the territory of Gibraltar or the Kingdom of Spain in which they are established. In particular, that person must have already pursued their activity for some time before the date when they wish to take advantage of the provisions of that Article and, during any period of temporary activity in the Kingdom of Spain or Gibraltar respectively, must continue to fulfil, in Gibraltar or the Kingdom of Spain where they are established, the requirements for the pursuit of their activity in order to be able to pursue it on their return.

PUBLIC

3. For the purposes of the application of Article SSC.11(3) and (4), the criterion for determining whether the activity that a self-employed person goes to pursue in the Kingdom of Spain or Gibraltar respectively is "similar" to the self-employed activity normally pursued shall be that of the actual nature of the activity, rather than of the designation of employed or self-employed activity that may be given to this activity by the Kingdom of Spain or Gibraltar respectively.

4. For the purposes of the application of Article SSC.13(2), a person who "normally pursues an activity as an employed person in the Kingdom of Spain and Gibraltar" shall refer to a person who simultaneously, or in alternation, for the same undertaking or employer or for various undertakings or employers, exercises one or more separate activities in the Kingdom of Spain and Gibraltar.

5. For the purposes of the application of Title II of the Protocol on Social Security Coordination, "registered office or place of business" shall refer to the registered office or place of business where the essential decisions of the undertaking are adopted and where the functions of its central administration are carried out.

6. For the purposes of Article SSC.13(2), an employed flight crew or cabin crew member normally pursuing air passenger or freight services in the Kingdom of Spain and Gibraltar shall be subject to the legislation of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, depending on where the home base is located.

7. Marginal activities shall be disregarded for the purposes of determining the applicable legislation under Article SSC.13. Article SSCI.15 shall apply to all cases under this Article.

PUBLIC

8. For the purposes of the application of Article SSC.13(3), a person who "normally pursues an activity as a self-employed person in the Kingdom of Spain and Gibraltar" shall refer, in particular, to a person who simultaneously or in alternation pursues one or more separate self-employed activities, irrespective of the nature of those activities, in the Kingdom of Spain and Gibraltar.

9. For the purpose of distinguishing the activities under paragraphs 1 and 4 from the situations described in Article SSC.11, the duration of the activity in the place of residence (whether it is permanent or of an *ad hoc* or temporary nature) shall be decisive. For these purposes, an overall assessment shall be made of all the relevant facts including, in particular, in the case of an employed person, the place of work as defined in the employment contract.

10. For the purposes of the application of Article SSC.11, a "substantial part of employed or self-employed activity" pursued in the Kingdom of Spain or in Gibraltar shall mean a quantitatively substantial part of all the activities of the employed or self-employed person pursued there, without this necessarily being the major part of those activities.

To determine whether a substantial part of the activities is pursued in the Kingdom of Spain or Gibraltar, the following indicative criteria shall be taken into account:

(a) in the case of an employed activity, the working time and/or the remuneration; and

(b) in the case of a self-employed activity, the turnover, working time, number of services rendered and/or income.

PUBLIC

In the framework of an overall assessment, a share of less than 25 % in respect of the criteria mentioned above shall be an indicator that a substantial part of the activities is not being pursued in the Kingdom of Spain or Gibraltar.

11. For the purposes of the application of Article SSC.13(3)(b), the "centre of interest" of the activities of a self-employed person shall be determined by taking account of all the aspects of that person's occupational activities, notably the place where the person's fixed and permanent place of business is located, the habitual nature or the duration of the activities pursued, the number of services rendered, and the intention of the person concerned as revealed by all the circumstances.

12. For the determination of the applicable legislation under paragraphs 6 and 7, the institutions concerned shall take into account the situation projected for the following 12 calendar months.

13. If a person pursues their activity as an employed person in the Kingdom of Spain and Gibraltar on behalf of an employer established outside the territory of the Kingdom of Spain and Gibraltar, and if this person resides in Gibraltar or the Kingdom of Spain respectively without pursuing substantial activity there, they shall be subject to the legislation of the place of residence.

PUBLIC

ARTICLE SSCI.13

Procedures for the application of Article SSC.10(3)(b), Article SSC.10(4), Article SSC.11, and Article SSC.12

1. Unless otherwise provided for by Article SSCI.14, where a person pursues their activity in the Kingdom of Spain, where the United Kingdom, in respect of Gibraltar, is competent under Title II of the Protocol on Social Security Coordination, or in Gibraltar, where the Kingdom of Spain is competent under Title II of the Protocol on Social Security Coordination, the employer, or, in the case of a person who does not pursue an activity as an employed person, the person concerned shall inform the competent institution of the United Kingdom, in respect of Gibraltar, or of the Kingdom of Spain, whose legislation is applicable, thereof, whenever possible in advance. That institution shall issue the attestation referred to in Article SSCI.15(2) to the person concerned and shall without delay make information concerning the legislation applicable to that person, pursuant to Article SSC.10(3)(b), Article SSC.11, or Article SSC.12, available to the institution designated by the competent authority of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, where the activity is pursued.

2. An employer within the meaning of Article SSC.10(4) whose registered office or place of business is in Gibraltar and who has an employee on board a vessel flying the flag of the Kingdom of Spain, or whose registered office or place of business is in the Kingdom of Spain and who has an employee on board a vessel flying the flag of the United Kingdom, in respect of Gibraltar, shall inform the competent institution of respectively the United Kingdom, in respect of Gibraltar, or of the Kingdom of Spain whose legislation is applicable, whenever possible in advance. That institution shall, without delay, make information concerning the legislation applicable to the person concerned, pursuant to Article SSC.10(4), available to the institution designated by the competent authority of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose flag the vessel on which the employee is to perform the activity, is flying.

PUBLIC

ARTICLE SSCI.14

Procedure for the application of Article SSC.13

1. A person who pursues activities in the Kingdom of Spain and Gibraltar shall inform the institution designated by the competent authority of the place of residence thereof.

2. The designated institution of the place of residence shall without delay determine the legislation applicable to the person concerned, having regard to Article SSC.13 and Article SSCI.12. That initial determination shall be provisional. The institution shall inform the designated institution of the other place in which an activity is pursued of its provisional determination.

3. The provisional determination of the applicable legislation, as provided for in paragraph 2, shall become definitive within two months of the institution designated by the competent authorities of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whichever is concerned, being informed of it, in accordance with paragraph 2, unless the legislation has already been definitively determined on the basis of paragraph 4, or the institution concerned informs the institution designated by the competent authority of the place of residence by the end of this two-month period that it cannot yet accept the determination or that it takes a different view on this.

4. Where uncertainty about the determination of the applicable legislation requires contacts between the institutions or authorities of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, at the request of one or more of the institutions designated by the competent authorities of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, or of the competent authorities themselves, the legislation applicable to the person concerned shall be determined by common agreement, having regard to Article SSC.13 and the relevant provisions of Article SSCI.12.

PUBLIC

Where there is a difference of views between the institutions or competent authorities concerned, those bodies shall seek agreement in accordance with the conditions set out above and Article SSCI.6 shall apply.

5. The competent institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose legislation is determined to be applicable either provisionally or definitively shall without delay inform the person concerned.

6. If the person concerned fails to provide the information referred to in paragraph 1, this Article shall be applied at the initiative of the institution designated by the competent authority of the place of residence as soon as it is appraised of that person's situation, possibly via another institution concerned.

ARTICLE SSCI.15

Provision of information to persons concerned and employers

1. The competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose legislation becomes applicable pursuant to Title II of the Protocol on Social Security Coordination shall inform the person concerned and, where appropriate, the employer(s) of the obligations laid down in that legislation. It shall provide them with the necessary assistance to complete the formalities required by that legislation.

PUBLIC

2. At the request of the person concerned or of the employer, the competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose legislation is applicable pursuant to Title II of the Protocol on Social Security Coordination shall provide an attestation that such legislation is applicable and shall indicate, where appropriate, until what date and under what conditions.

PUBLIC

ARTICLE SSCI.16

Cooperation between institutions

1. The relevant institutions shall communicate to the competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose legislation is applicable to a person pursuant to Title II of the Protocol on Social Security Coordination the necessary information required to establish the date on which that legislation becomes applicable and the contributions which that person and the employer(s) are liable to pay under that legislation.

2. The competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose legislation becomes applicable to a person pursuant to Title II of the Protocol on Social Security Coordination shall make the information indicating the date on which the application of that legislation takes effect available to the institution designated by the competent authority applying the legislation that person was last subject to.

TITLE III

SPECIAL PROVISIONS
CONCERNING THE VARIOUS CATEGORIES OF BENEFITS

PUBLIC

CHAPTER I

SICKNESS, MATERNITY AND EQUIVALENT PATERNITY BENEFITS

ARTICLE SSCI.17

General implementing provisions

1. The competent authorities or institutions shall ensure that any necessary information is made available to insured persons regarding the procedures and conditions for the granting of benefits in kind where such benefits are received in the place of residence.

2. Notwithstanding Article SSC.6(a), the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, may become responsible for the cost of benefits in accordance with Article SSC.19 only if, either the insured person has made a claim for a pension under the legislation of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, or in accordance with Articles SSC.20 to 24, they receive a pension under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar.

ARTICLE SSCI.18

Regime applicable in the event of the existence of more than one regime in the place of residence or place of work

If the legislation of the place of residence or place of work comprises more than one scheme of sickness, maternity and paternity insurance for more than one category of insured persons, the provisions applicable under Articles SSC.16, SSC.19 and 21 shall be those of the legislation on the general scheme for employed persons.

PUBLIC

ARTICLE SSCI.19

Residence in the Kingdom of Spain when the United Kingdom, in respect of Gibraltar, is competent or in Gibraltar when the Kingdom of Spain is competent

1. For the purposes of the application of Article SSC.16, the frontier worker and/or members of their family shall be obliged to register with the institution of the place of residence. Their right to benefits in kind in the place of residence shall be certified by a document issued by the competent institution upon request of the insured person or upon request of the institution of the place of residence.

2. The document referred to in paragraph 1 shall remain valid until the competent institution informs the institution of the place of residence of its cancellation.

The institution of the place of residence shall inform the competent institution of any registration under paragraph 1 and of any change or cancellation of that registration.

3. This Article shall apply *mutatis mutandis* to the persons referred to in Articles SSC.20 and 21.

PUBLIC

ARTICLE SSCI.20

Application of Article SSC.17(2)

1. For the purposes of Article SSC.17(2), the person concerned must present to the health care provider in the Kingdom of Spain or Gibraltar, as the case may be, a document issued by the competent institution of the United Kingdom, in respect of Gibraltar, where the stay is in the Kingdom of Spain, or the competent institution of the Kingdom of Spain, where the stay is in Gibraltar, indicating their entitlement to benefits in kind under that provision. If the person does not have such a document, the competent institutions, upon request or if otherwise necessary, shall contact each other in order to verify that the person is entitled to benefits in kind under this provision.

2. The benefits in kind provided by the institution of the place of stay on behalf of the competent institution under Article SSC.17(2) shall give rise to full reimbursement.

ARTICLE SSCI.21

Application of Article SSC.22

If the former frontier worker is no longer covered by the legislation of the place where their last activity was pursued, and the former frontier worker or a member of their family travels there with the purpose of receiving benefits in kind pursuant to Article SSC.22, they shall submit to the institution of the place of stay a document issued by the competent institution.

ARTICLE SSCI.22

Contributions by pensioners

If a person receives a pension from the Kingdom of Spain and from the United Kingdom, in respect of Gibraltar, the amount of contributions deducted from all the pensions paid shall under no circumstances be greater than the amount deducted in respect of a person who receives the same amount of pension from the Kingdom of Spain or the United Kingdom, in respect of Gibraltar.

PUBLIC

CHAPTER II

BENEFITS IN RESPECT OF ACCIDENTS AT WORK
AND OCCUPATIONAL DISEASES

ARTICLE SSCI.23

Right to benefits in kind and in cash in place of residence

1. For the purposes of the application of Article SSC.28, the procedures laid down in Articles SSCI.25 to 26 shall apply *mutatis mutandis*.

2. When providing special benefits in kind in connection with accidents at work and occupational diseases under the legislation of the place of residence, the institution of that place of residence shall without delay inform the competent institution.

CHAPTER III

DEATH GRANTS

ARTICLE SSCI.24

Claim for death grants

For the purposes of applying Articles SSC.34 and 35, the claim for death grants shall be sent either to the competent institution or to the institution of the claimant's place of residence, which shall send it to the competent institution.

The claim shall contain the information required under the legislation applied by the competent institution.

PUBLIC

CHAPTER IV

INVALIDITY BENEFITS AND OLD-AGE AND SURVIVORS' PENSIONS

PUBLIC

ARTICLE SSCI.25

Additional provisions for the calculation of benefit

1. For the purposes of calculating the theoretical amount and the actual amount of the benefit in accordance with Article SSC.45 (1)(b), the rules provided for in Article SSCI.10(3), (4), (5) and (6) shall apply.

2. Where periods of voluntary or optional continued insurance have not been taken into account under Article SSCI.10(3), the institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, under whose legislation those periods were completed shall calculate the amount corresponding to those periods under the legislation it applies. The actual amount of the benefit, calculated in accordance with Article SSC.45(1)(b) shall be increased by the amount corresponding to periods of voluntary or optional continued insurance.

3. The institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall calculate, under the legislation it applies, the amount due corresponding to periods of voluntary or optional continued insurance which, under Article SSC.46(3)(c), shall not be subject to either the United Kingdom's in respect of Gibraltar or the Kingdom of Spain's rules relating to withdrawal, reduction or suspension.

Where the legislation applied by the competent institution does not allow it to determine this amount directly, on the grounds that that legislation allocates different values to insurance periods, a notional amount may be established. the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall lay down the detailed arrangements for the determination of that notional amount.

PUBLIC

ARTICLE SSCI.26

Taking into account of child-raising periods

1. For the purposes of this Article, "child-raising period" refers to any period which is credited under the pension legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, or which provides a supplement to a pension explicitly for the reason that a person has raised a child, irrespective of the method used to calculate those periods and whether they accrue during the time of child-raising or are acknowledged retroactively.

2. Where, under the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, which is competent under Title II of the Protocol on Social Security Coordination, no child-raising period is taken into account, the institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose legislation, according to Title II of the Protocol on Social Security Coordination, was applicable to the person concerned at the date when, under that legislation, the child-raising period started to be taken into account for the child concerned, shall remain responsible for taking into account that period as a child-raising period under its own legislation, as if such child-raising took place in its own territory.

3. Paragraph 2 shall not apply if the person concerned is, or becomes, subject to the legislation of the United Kingdom, in respect of Gibraltar, or the Kingdom of Spain respectively due to the pursuit of an employed or self-employed activity there.

CHAPTER V

UNEMPLOYMENT BENEFITS

ARTICLE SSCI.27

Aggregation of periods and calculation of benefits

1. Article SSCI.10 of this Annex shall apply *mutatis mutandis* to Article SSC.54 of the Protocol. Without prejudice to the underlying obligations of the institutions involved, the person concerned may submit to the competent institution a document issued by the institution of the place of residence to whose legislation they were subject to in respect of their last activity as an employed or self-employed person specifying the periods completed under that legislation.

2. For the purposes of applying Article SSC.55 of the Protocol, the competent institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, whose legislation provides that the calculation of benefits varies with the number of members of the family, shall also take into account the members of the family of the person concerned who are residing in the same household as if they resided in the place of the competent institution. This provision shall not apply where, in the place of residence of members of the family, another person is entitled to unemployment benefits calculated on the basis of the number of members of the family.

PUBLIC

ARTICLE SSCI.28

Unemployed persons who resided outside the place of competence

1. The competent institution of the place of last employment shall inform wholly unemployed persons of their rights and obligations and shall provide them with documents which shall include all necessary information related to the receipt of unemployment benefits in accordance with its legislation in the place of residence.

2. The relevant institutions of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall provide each other with the necessary information to support the job-seeking activities of unemployed persons and to inform them about the applicable control procedures and conditions, and to which employment service they shall make themselves available. The institution of the place of residence shall, upon request of the competent institution, immediately inform the competent institution of any circumstances of which it is aware and which are likely to affect the entitlement to benefits, in particular, if the wholly unemployed persons have taken up employment or have become self-employed in the place of residence.

3. Where, in accordance with Article SSC.56, an unemployed person decides to make themself also available to the employment services of the place of residence, by registering there as a person seeking work, they shall inform the competent institution and the employment services of providing the benefits.

PUBLIC

4. Where requested by the employment services of place of residence, the competent employment services shall send the relevant information concerning the unemployed person's registration and their search for employment. The employment services of the place of residence shall also, upon request of the competent institution, immediately inform the competent institution of any circumstances of which it is aware and which are likely to affect the entitlement to benefits, in particular, if the wholly unemployed persons have taken up employment or have become self-employed in place of residence.

PUBLIC

ARTICLE SSCI.29

Enhanced measures of support and cooperation for unemployed persons who resided outside the place of competence

The competent authorities or competent institutions of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall cooperate and may agree amongst themselves specific procedures and time-limits concerning the follow-up of the unemployed person's situation as well as other measures to facilitate the job-seeking activities of unemployed persons concerned.

CHAPTER VI

FAMILY BENEFITS

PUBLIC

ARTICLE SSCI.30

Priority rules in the event of overlapping

For the purposes of applying Article SSC.59(1)(b)(i) and (ii), where the order of priority cannot be established on the basis of the children's place of residence, he Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall calculate the amount of benefits including the children not resident within its own territory. In the event of applying Article SSC.59(1)(b)(i), the institution that applies the legislation which provides for the highest level of benefits shall pay the full amount of such benefits and be reimbursed half this sum by the other institution up to the limit of the amount provided for in the legislation applied by the latter institution.

ARTICLE SSCI.31

Rules applicable where the applicable legislation
and/or the competence to grant family benefits changes

1. Where the applicable legislation and/or the competence to grant family benefits change between the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, during a calendar month, irrespective of the payment dates of family benefits under the legislation of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, the institution which has paid the family benefits by virtue of the legislation under which the benefits have been granted at the beginning of that month shall continue to do so until the end of the month in progress.

2. It shall inform the other institution of the date on which it ceases to pay the family benefits in question. Payment of benefits from either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, shall take effect from that date.

PUBLIC

ARTICLE SSCI.32

Procedure for applying Articles SSC.58 and 59

1. The application for family benefits shall be addressed to the competent institution. For the purposes of applying Articles SSC.58 and 59, the situation of the whole family shall be taken into account as if all the persons involved were subject to the legislation of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, and residing there, in particular as regards a person's entitlement to claim such benefits. Where a person entitled to claim the benefits does not exercise their right, an application for family benefits submitted by the other parent, a person treated as a parent, or a person or institution acting as guardian of the child or children, shall be taken into account by the competent institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, and whose legislation is applicable.

2. The institution to which an application is made in accordance with paragraph 1 shall examine the application on the basis of the detailed information supplied by the applicant, taking into account the overall factual and legal situation of the applicant's family. If that institution concludes that its legislation is applicable by priority right in accordance with Articles SSC.58 and 59, it shall provide the family benefits according to the legislation it applies.

If it appears to that institution that there may be an entitlement to a differential supplement by virtue of the legislation of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, in accordance with Article SSC.59(2), that institution shall forward the application, without delay, to the competent institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, and inform the person concerned; moreover, it shall inform the other institution of its decision on the application and the amount of family benefits paid.

3. Where the institution to which the application is made concludes that its legislation is applicable, but not by priority right in accordance with Article SSC.59(1) and (2), it shall take a provisional decision, without delay, on the priority rules to be applied and shall forward the application, in accordance with Article SSC.59(3), to the institution of either the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, and shall also inform the applicant thereof. That institution shall take a position on the provisional decision within two months.

If the institution to which the application was forwarded does not take a position within two months of the receipt of the application, the provisional decision referred to above shall apply and the institution shall pay the benefits provided for under its legislation and inform the institution to which the application was made of the amount of benefits paid.

4. Where there is a difference of views between the institutions concerned about which legislation is applicable by priority right, Article SSCI.6(2) to (4) shall apply. For this purpose, the institution of the place of residence referred to in Article SSCI.6(2) shall be the institution of the child's or children's place of residence.

5. If the institution which has supplied benefits on a provisional basis has paid more than the amount for which it is ultimately responsible, it may claim reimbursement of the excess from the institution with primary responsibility in accordance with the procedure laid down in the Administrative arrangement.

PUBLIC

TITLE IV

FINANCIAL PROVISIONS

CHAPTER I

REIMBURSEMENT OF THE COST OF BENEFITS
IN APPLICATION OF ARTICLES SSC.17, SSC.27 And SSC.33

ARTICLE SSCI.33

Principles

For the purposes of applying Articles SSC.17, SSC.27 and SSC.33, the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall adopt the necessary arrangements in order to ensure the full reimbursement of benefits provided to persons covered by the Protocol on Social security coordination by the competent institution to the institution providing those benefits.

PUBLIC

ARTICLE SSCI.34

Procedure for reimbursement between institutions

The reimbursements between the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall be made as promptly as possible by the competent authorities of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar. Every institution concerned shall be obliged to reimburse claims, as soon as it is in a position to do so. A dispute concerning a particular claim shall not hinder the reimbursement of another claim or other claims.

PUBLIC

CHAPTER II

RECOVERY OF BENEFITS PROVIDED BUT NOT DUE,
RECOVERY OF PROVISIONAL PAYMENTS AND CONTRIBUTIONS,
OFFSETTING AND ASSISTANCE WITH RECOVERY

ARTICLE SSCI.35

Common provisions

For the purposes of applying Article SSC.67 and within the framework defined therein, the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall adopt the necessary arrangements to ensure, wherever possible, offsetting either between the institutions of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, concerned, or recovery *vis-à-vis* the natural or legal person concerned.

TITLE V

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

PUBLIC

ARTICLE SSCI.36

Medical examination and administrative checks

1. Without prejudice to other provisions, medical examination shall be carried out, at the request of the competent institution, by the institution of the beneficiary's place of residence in accordance with the procedures laid down by the legislation applied by that institution.

The debtor institution shall inform the institution of the place of residence of any special requirements, if necessary, to be followed and points to be covered by the medical examination.

2. The institution of the place of residence shall forward a report to the debtor institution that requested the medical examination. This institution shall be bound by the findings of the institution of the place of residence.

The debtor institution shall reserve the right to have the beneficiary examined by a doctor of its choice. However, the beneficiary may be asked to return to the place where the debtor institution is established only if they are able to make the journey without prejudice to their health and the cost of travel and accommodation is paid for by the debtor institution.

3. The administrative check shall, at the request of the debtor institution, be performed by the institution of the beneficiary's place of residence.

Paragraph 2 shall also apply in this case.

4. The competent authorities or competent institutions of The Kingdom of Spain and the United Kingdom in respect of Gibraltar may agree specific provisions and procedures to improve fully or partly the labour-market readiness of claimants and recipients and their participation in any schemes or programmes available in the place of residence for that purpose.

5. As an exception to the principle of free-of-charge mutual administrative cooperation in Article SSC 62(3), the effective amount of the expenses of the checks referred to in paragraphs 1 to 3 shall be refunded to the institution which was requested to carry them out by the debtor institution which requested them.

ARTICLE SSCI.37

Information

The competent authorities of The Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall prepare the information needed to ensure that the persons covered are aware of their rights and the administrative formalities required in order to assert them. This information shall, where possible, be disseminated electronically via publication online on sites accessible to the public. They shall ensure that the information is regularly updated and monitor the quality of services provided to customers.

PUBLIC

ARTICLE SSCI.38

Currency conversion

1. For the purposes of applying the Protocol on Social Security Coordination and this Annex, the exchange rate between the currencies applied respectively in the Kingdom of Spain and in the United Kingdom, in respect of Gibraltar, shall be the reference rate published by the European Central Bank.

2. For the purposes of applying the Protocol on Social Security Coordination and this Annex, the rate of conversion shall be understood as a daily conversion rate published by the European Central Bank.

3. If not otherwise stated in this Article, the rate of conversion shall be the rate published on the day when the operation is performed.

4. An institution of the Kingdom of Spain or the United Kingdom in respect of Gibraltar which for the purpose of the establishment of an entitlement, and for the first calculation of the benefit, has to convert an amount, shall use:

(a) when, according to national legislation or the Protocol on Social Security Coordination, an institution takes into account amounts, such as earnings or benefits, during a certain period before the date for which the benefit is calculated, the rate of conversion published on the last day of that period;

PUBLIC

(b) when, according to national legislation or the Protocol on Social Security Coordination, for the purpose of calculation of the benefit an institution takes into account one amount, the rate of conversion published on the first day of the month immediately preceding the month when the provision must be applied.

5. Paragraph 4 shall apply *mutatis mutandis* when an institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, has to convert an amount for the recalculation of the benefit due to changes in the factual or legal situation of the person concerned.

6. An institution of The Kingdom of Spain or the United Kingdom, in respect of Gibraltar, which pays a benefit that is regularly indexed in accordance with the national legislation, and where the amounts in other currency have an impact on that benefit, shall, when recalculating it, use the rate of conversion published on the first day of the month preceding the month when the indexation is due, unless provided for differently in the national legislation.

7. For the purposes of this Article, the date to be taken into account for determining the applicable exchange rate between the currencies of the Kingdom of Spain and the United Kingdom, in respect of Gibraltar, shall be:

(a) in the case of a request for offsetting from arrears/ongoing payments, the working day immediately preceding the day on which the applicant party sent the final request for offsetting from arrears/ongoing payments; or

(b) in the case of a request for recovery, the working day immediately preceding the day on which the applicant party sent the first request for recovery.

PUBLIC

For the purposes of this paragraph, working day shall refer to a working day of the European Central Bank on which it publishes a daily reference rate for currency exchange.

PUBLIC

ARTICLE SSCI.39

Transitional provisions relating to pensions

1. Where the contingency arises before the date of entry into force of this Annex in the territory of the Kingdom of Spain or the United Kingdom in respect of Gibraltar concerned and the claim for pension has not been awarded before that date, such claim shall give rise to a double award, inasmuch as benefits must be granted, pursuant to such contingency, for a period prior to that date:

(a) for the period prior to the date of entry into force of this Annex in the territory of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, with agreements in force between the Kingdom of Spain and the United Kingdom in respect of Gibraltar;

(b) for the period commencing on the date of entry into force of this Annex in the territory of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, in accordance with the Protocol on Social Security Coordination.

However, if the amount calculated pursuant to the provisions referred to under subparagraph (a) is greater than that calculated pursuant to the provisions referred to under subparagraph (b), the person concerned shall continue to be entitled to the amount calculated pursuant to the provisions referred to under subparagraph (a).

2. A claim for invalidity, old age or survivors' benefits submitted to an institution of the Kingdom of Spain or the United Kingdom, in respect of Gibraltar, from the date of entry into force of this Annex in the territory of The Kingdom of Spain or the United Kingdom, in respect of Gibraltar, concerned shall automatically necessitate the reassessment of the benefits which have been awarded for the same contingency prior to that date by the institution or institutions of accordingly the United Kingdom, in respect of Gibraltar or the Kingdom of Spain, as appropriate in accordance with the Protocol on Social Security Coordination; such reassessment may not give rise to any reduction in the amount of the benefit awarded.

PUBLIC

PUBLIC

PROTOCOL

ON MUTUAL ADMINISTRATIVE ASSISTANCE IN CUSTOMS MATTERS

ARTICLE PCUST.1

Definitions

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

(a) "applicant authority" means an administrative authority requesting administrative assistance under this Protocol and notified by a Party as competent for that purpose;

(b) "customs legislation" means any laws or regulations 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;

(c) "information" means any data, document, image, report, communication or authenticated copy, in any format, including electronic, whether or not processed or analysed;

(d) "operation in breach of customs legislation" means any violation or attempted violation of customs legislation;

(e) "requested authority" means an administrative authority receiving a request for assistance under this Protocol and notified by a Party as competent for that purpose;

(f) "person" means any natural or legal person; and

(g) "personal data" means any information relating to an identified or identifiable natural person.

PUBLIC

ARTICLE PCUST.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 customs legislation, in particular by preventing, investigating and combating operations in breach of that legislation.

2. The provisions on assistance in customs matters in this Protocol apply 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.

3. Assistance in the recovery of duties, taxes or fines is covered by 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 PCUST.3

Assistance on request

1. At the request of the applicant authority, the requested authority shall provide the applicant authority with all relevant information which may enable the applicant authority 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; or

(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 take the necessary steps in accordance with its applicable laws and regulations to ensure special surveillance of and to provide the applicant authority with information on:

(a) 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;

PUBLIC

(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 stored or 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;

(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; and

(e) premises suspected by the applicant authority of being used to commit breaches of customs legislation.

ARTICLE PCUST.4

Spontaneous assistance

The Parties shall assist each other on their own initiative in accordance with their laws and regulations 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) goods known to be subject to operations in breach of customs legislation;

PUBLIC

(b) persons in respect of whom there are reasonable grounds for believing they are or have been involved in operations in breach of customs legislation;

(c) means of transport in respect of which there are reasonable grounds for believing that they have been, are, or may be used in operations in breach of customs legislation; and

(d) new means or methods employed in carrying out operations in breach of customs legislation.

PUBLIC

ARTICLE PCUST.5

Form and substance of requests for assistance

1. 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, or as the applicant authority and the requested authority may otherwise agree the requested authority may accept oral requests but such oral requests shall be confirmed by the applicant authority in writing promptly.

2. Requests pursuant to paragraph 1 shall include the following information:

(a) the applicant authority and requesting official;

(b) the information or type of assistance requested;

(c) the object of and the reason for the request;

(d) the laws and regulations and other legal elements involved;

(e) indications as exact and comprehensive as possible on the goods or 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, to the extent necessary.

4. If a request does not meet the formal requirements set out in this Article, the requested authority may require the correction or the completion of the request. Pending such correction or completion, precautionary measures may be ordered.

PUBLIC

ARTICLE PCUST.6

Execution of requests

1. In order to comply with a request for assistance, the requested authority shall proceed promptly, within the limits of its competence, as though it was acting on its own account or at the request of another authority of that same Party, by supplying information already in its possession, by carrying out appropriate enquiries or by arranging for those enquiries 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. In providing any such assistance the requested authority shall give appropriate consideration to the urgency of the request.

2. Requests for assistance shall be executed in accordance with the laws and regulations of the requested Party.

ARTICLE PCUST.7

Form in which information is to be communicated

1. The requested authority shall communicate results of enquiries conducted pursuant to a request made under this Protocol to the applicant authority in writing, together with relevant documents, certified copies of documents or other items. This information may be provided in electronic format. A requested authority may communicate results of enquiries orally, but this shall be followed up in writing.

PUBLIC

2. Original documents shall be transmitted according to each Party's legal constraints, only at the request of the applicant authority, in cases where certified copies would be insufficient. The applicant authority shall return those originals at the earliest opportunity.

3. Under the provisions referred to in paragraph 2, the requested authority shall 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.

PUBLIC

ARTICLE PCUST.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 PCUST.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. With the agreement of the requested Party, and subject to the conditions it may specify, duly authorised officials of the other Party may be present at enquiries carried out in the requested Party's territory.

ARTICLE PCUST.9

Delivery and notification

1. At the request of the applicant authority, the requested authority shall take all necessary measures in accordance with its applicable laws and regulations in order to deliver any documents or to notify any decisions of the applicant authority that fall within the scope of this Protocol to an addressee residing or established in the territory of the requested authority.

2. Such requests for the delivery of documents or the notification of decisions shall be made in writing in an official language of the requested authority or in a language acceptable to that authority, English always being an acceptable language.

ARTICLE PCUST.10

Automatic exchange of information

1. The Parties may, by mutual arrangement in accordance with Article PCUST.15 of this Protocol:

(a) exchange any information covered by this Protocol on an automatic basis; and

(b) exchange specific information in advance of the arrival of consignments in the territory of the other Party.

PUBLIC

2. The Parties may establish arrangements on the type of information they wish to exchange, the format and the frequency of transmission to implement the exchanges under sub-paragraphs (a) and (b) of paragraph 1.

PUBLIC

ARTICLE PCUST.11

Exceptions to the obligation to provide assistance

1. Assistance under this Protocol 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 such assistance would:

(a) be likely to prejudice the sovereignty of the United Kingdom, in respect of Gibraltar, or that of a Member State which has been requested to provide assistance under this Protocol; or

(b) be likely to prejudice public policy, security or other essential interests in particular in the cases referred to in paragraph 5 of Article PCUST.12 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 for that decision in writing to the applicant authority without delay.

PUBLIC

ARTICLE PCUST.12

Information exchange and confidentiality

1. The information received under this Protocol shall be used solely for the purposes established in this Protocol.

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 use information obtained and documents consulted in accordance with the provisions of this Protocol as evidence in their records of evidence, reports and testimonies and in proceedings and charges brought before the courts or tribunals. 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 considered to be of a confidential or restricted nature, in accordance with the laws and regulations applicable in each Party's territory. 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, unless the Party which provided the information gives its prior consent to the disclosure of such information. 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, use best efforts to agree on additional protections.

ARTICLE PCUST.13

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 confidential or certified true copies thereof, as may be needed for the proceedings. The request for appearance shall 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.

PUBLIC

ARTICLE PCUST.14

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 a substantial or extraordinary nature are or will be required to execute the request, the Parties shall consult to determine the terms and conditions under which the request is to be executed, as well as the manner in which the costs are to be borne.

ARTICLE PCUST.15

Implementation

1. The implementation of this Protocol shall be entrusted on the one hand to the competent authorities of the United Kingdom, in respect of Gibraltar, and on the other hand to the competent services of the European Commission and the customs authorities of the Member States, 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.

PUBLIC

2. Each Party shall keep the other Party informed of the detailed implementation measures which it adopts 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 provided for 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.

PUBLIC

ARTICLE PCUST.16

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, in respect of Gibraltar, insofar as the provisions of those bilateral agreements are incompatible with those of this Protocol.

ARTICLE PCUST.17

Consultations

In respect of 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 Economy and Trade.

ARTICLE PCUST.18

Future developments

With a view to supplementing the levels of mutual assistance provided for in this Protocol, the Specialised Committee on Economy and Trade may adopt a decision to expand this Protocol by establishing arrangements on specific sectors or matters in accordance with the Parties' respective customs legislation.

PUBLIC

ANNEX 38

PUBLIC

PROTOCOL
ON ADMINISTRATIVE COOPERATION AND COMBATING FRAUD IN THE FIELD OF VALUE ADDED TAX AND EXCISE DUTY AND ON MUTUAL ASSISTANCE FOR THE RECOVERY OF CLAIMS RELATING TO TAXES AND DUTIES

TITLE I

GENERAL PROVISIONS

ARTICLE PVAT.1

Objective

The objective of this Protocol is to establish a framework for administrative cooperation between the Member States and the United Kingdom, in respect of Gibraltar; hereafter the Parties, in order to enable their authorities to assist each other in ensuring compliance with VAT, excise duty and transaction tax legislation, as applicable, and in protecting such tax revenue and in recovering claims related to taxes and duties.

ARTICLE PVAT.2

Scope

PUBLIC

This Protocol lays down rules and procedures for cooperation:

(a) to exchange any information that may help to effect a correct assessment of VAT, excise duty and transaction tax, as applicable, monitor the correct application of such taxes and to combat fraud related to such taxes;

(b) for the recovery of:

(i) claims relating to VAT, transaction tax, customs duties and excise duties, levied by or on behalf of a Party or its territorial or administrative subdivisions, excluding the local authorities;

(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 them, or confirmed by administrative or judicial bodies at the request of those administrative authorities; and interest and costs relating to such claims.

ARTICLE PVAT.3

Definitions

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

(a) "administrative enquiry" means all the controls, checks and other action taken by any of the Parties in the performance of their duties with a view to ensuring the proper application of the VAT, transaction tax or excise duty legislation;

(b) "applicant authority" means the competent authority requesting assistance for recovery;

(c) "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;

(d) "competent authority" means the authority notified pursuant to Article PVAT.4(1);

(e) "customs duties" means the duty payable on goods entering or leaving the customs territory of each Party in accordance with the rules set out in their customs legislation;

(f) "excise duties" means those duties and charges defined as such under the domestic legislation of the Party in which the requesting authority is located;

PUBLIC

(g) "person" means a natural person, a legal person, any association of persons which is not a legal person but which is recognised in a Party as having the capacity to perform legal acts and any other legal arrangement of whatever nature and form, regardless of whether it has legal personality;

(h) "requested authority" means the competent authority receiving a request for assistance;

(i) "requesting authority" means the competent authority requesting assistance for VAT, transaction tax or excise duties;

(j) "spontaneous exchange" means the non-systematic communication, at any moment and without prior request, of information to the United Kingdom, in respect of Gibraltar or any of the Union Member States;

(k) "third country" means a country that is neither a Union Member State nor the United Kingdom, in respect of Gibraltar;

(l) "transaction tax" means the tax pursuant to the [reference to legislative act to be inserted] of Gibraltar; and

(m) "VAT" means value added tax pursuant to Council Directive 2006/112/EC[1] on the common system of value added tax for the Union.

[1] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ EU L 347, 11.12.2006, p. 1, ELI: http://data.europa.eu/eli/dir/2006/112/oj).

ARTICLE PVAT.4

Organisation

PUBLIC

1. Each Party shall notify a competent authority responsible for the application of this Protocol and shall inform the other Party thereof.

2. Each Party shall notify:

(a) a single authority to act as requesting or requested authority for the administrative cooperation on VAT and transaction tax, as applicable, under Title II of this Protocol;

(b) a single authority to act as requesting or requested authority for the administrative cooperation on excise duties under Title II-III of this Protocol;

(c) a single authority to act as applicant or requested authority for the administrative cooperation under Title IV of this Protocol.

3. The competent authority of the United Kingdom, in respect of Gibraltar, referred to in paragraph 1 shall inform the European Commission of the designation of the authorities of the United Kingdom, in respect of Gibraltar, appointed in accordance with paragraph 2, and of any updates on these designations. The European Commission shall pass on this information to the Member States.

4. The Member States' competent authority referred to in paragraph 1 shall inform the European Commission of their designation of the authorities appointed in accordance with paragraph 2, and of any updates to these designations. The European Commission shall pass on this information to the competent authority of the United Kingdom, in respect of Gibraltar, referred to in paragraph 1.

5. The information concerning the single authorities referred to in paragraph 2 shall contain all contact details, including a telephone number and an e-mail address for electronic communication.

PUBLIC

ARTICLE PVAT.5

Use of languages

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.

ARTICLE PVAT.6

Confidentiality

1. Any information obtained by a Party under this Protocol shall be treated as confidential and used solely for the purpose of this Protocol.

2. Any information received under this Protocol shall enjoy the protection granted to similar information under the relevant laws and regulation of the receiving authority.

3. Such information may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the application of VAT, excise duty, transaction tax or customs duties legislation, including recovery or precautionary measures with regard to claims referred to in point (b) of Article PVAT.2.

4. Further use shall require prior written consent of the authority supplying the information.

5. Reports, statements and any other documents, or certified true copies or extracts thereof, obtained by a Party under the assistance provided by this Protocol may be invoked as evidence in that Party on the same basis as similar documents provided by another authority of that Party.

PUBLIC

TITLE II

ADMINISTRATIVE COOPERATION AND COMBATING VAT,
EXCISE DUTY AND TRANSACTION TAX FRAUD

PUBLIC

CHAPTER 1

EXCHANGE OF INFORMATION ON REQUEST

ARTICLE PVAT.7

Exchange of information and administrative enquiries

1. At the request of the requesting authority, the requested authority shall communicate all relevant information referred to in point (a) of Article PVAT.2, 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 requested authority may consult with the requesting authority on the need for specific enquiries and shall communicate the information obtained, including reports, statements, certified copies and any other document.

ARTICLE PVAT.8

Assistance on excise duty requests

PUBLIC

At the request of the requesting authority, the requested authority shall take the necessary steps in accordance with its applicable laws and regulations to ensure special surveillance of and to provide the requesting authority with information on:

(a) persons in respect of whom there are reasonable grounds for believing that they are or have been involved in operations in breach of excise duty 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 excise duty legislation;

(c) places where stocks of goods have been or may be stored or 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 excise duty legislation;

(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 excise duty legislation;

(e) premises suspected by the requesting authority of being used to commit breaches of excise duty legislation;

(f) movement of goods; and

(g) any other relevant information concerning an economic operator or a tax warehouse which may be involved in operations in breach of excise duty legislation.

PUBLIC

ARTICLE PVAT.9

Time limit for providing information

1. The requested authority shall provide the information referred to in Article PVAT.6 as quickly as possible and no later than 90 days 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 30 days.

2. Where the requested authority is unable to meet these time limits, it shall inform the requesting authority in writing of the reasons and indicate when a reply may be expected.

CHAPTER 2

EXCHANGE OF INFORMATION WITHOUT PRIOR REQUEST

PUBLIC

ARTICLE PVAT.10

Spontaneous exchange of information

The competent authority of a Party shall, without prior request, forward to the competent authority of the other Party any information relevant for the correct application of VAT, excise duties or transaction tax, in particular where:

(a) taxation is deemed to take place in the other Party;

(b) a breach of VAT, excise duty or transaction tax legislation has been committed or is likely to have been committed in the other Party; or

(c) there is a risk of tax loss in the other Party.

CHAPTER 3

OTHER FORMS OF COOPERATION

ARTICLE PVAT.11

Administrative notification

1. At the request of the requesting authority, the requested authority shall take measures to deliver or notify documents or decisions falling within the scope of this Protocol to addressees in its territory. Requests shall be made in writing, English always being acceptable.

2. Requests shall include the name and address of the addressee, the subject of the decision or instrument and any other relevant information

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.

PUBLIC

ARTICLE PVAT.12

Presence in administrative offices and participation in administrative enquiries

1. By agreement between the requesting authority and the requested authority, the requested authority may allow officials of the requesting authority to be present in its offices, or any other place where those authorities carry out their duties or during administrative enquiries carried out in its territory, with a view to: exchanging the information referred to in point (a) of Article PVAT.2. 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.

2. By agreement between the requesting authority and the requested authority, and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may take part in the administrative enquiries carried out in the territory of the requested Party with a view to collecting and exchanging the information referred to in point (a) of Article PVAT.2. 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 Party.

PUBLIC

CHAPTER 4

GENERAL PROVISIONS

PUBLIC

ARTICLE PVAT.13

Conditions governing the exchange of information

1. The requested authority shall provide the requesting authority with the information referred to in point (a) of Article PVAT.2 or carry out an administrative notification referred to in Article PVAT.11 provided that:

(a) the number and nature of the requests for information or administrative notification made by the requesting authority do not impose a disproportionate administrative burden; and

(b) the requesting authority has exhausted the usual sources of information available.

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 Party which would have to supply the information do not authorise that Party to carry out those enquiries or collect or use that information for its own purposes.

3. A requested authority may refuse to provide information where the requesting authority is unable, for legal reasons, to provide similar information.

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 shall in no case 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 PVAT.14

Forms of communication

1. Requests pursuant to this Protocol shall be made in writing, including in electronic form. Requests shall include, as far as possible:

(a) the requesting authority and the requesting official;

(b) the type of assistance requested;

(c) the object of and the reason for the request;

(d) the legal elements involved;

PUBLIC

(e) indications as exact and comprehensive as possible of the goods, persons or transactions which are the target of the investigations;

(f) a summary of the relevant facts and of the enquiries already carried out; and

(g) any additional details available to enable the requested authority to comply with the request.

2. If a request does not meet the requirements set out in this Article, the requested authority may require its correction or completion. Pending such correction or completion, precautionary measures may nevertheless be ordered where appropriate.

PUBLIC

TITLE III

RECOVERY ASSISTANCE

PUBLIC

CHAPTER 1

EXCHANGE OF INFORMATION

ARTICLE PVAT.15

Request for information

1. At the request of the applicant authority, the requested authority shall provide any information for the identification of debtors or assets located in its territory and necessary to recover the claims referred to in this Protocol.

2. The requested authority may carry out or arrange the necessary administrative enquiries as if acting in its own recovery cases.

3. Assistance may be refused only where:

(a) the requested authority could not obtain the same information for its own purposes;

(b) disclosure would reveal a professional or commercial secret; or

(c) disclosure would be contrary to public policy or security.

4. Information may not be refused solely because it is held by a financial institution or a representative acting on behalf of another person.

5. Where assistance is refused, the requested authority shall inform the applicant authority in writing and give reasons.

PUBLIC

ARTICLE PVAT.16

Presence in administrative offices and participation in administrative enquiries

1. With the agreement of the requested authority, officials authorised by the applicant authority may be present in the offices of the requested authority or take part in administrative enquiries related to recovery cases.

2. During such activities, the visiting officials shall act under the supervision and in accordance with the procedures of the requested authority. They shall not exercise any enforcement powers on their own.

3. When national law allows, the requested authority may permit the visiting officials to consult relevant files, interview persons involved or assist in hearings or court proceedings.

4. Visiting officials shall carry written authorisation confirming their identity and official capacity and shall respect the same confidentiality obligations as officials of the requested authority.

CHAPTER 2

ASSISTANCE FOR THE NOTIFICATION OF DOCUMENTS

ARTICLE PVAT.17

Request for notification of certain documents relating to claims

1. At the request of the applicant authority, the requested authority shall notify the addressee of any instruments, decisions or documents falling within the scope of this Protocol, including those of a judicial nature, relating to VAT, excise duty, transaction tax, customs duties or their recovery.

Requests for notification shall include:

(a) the applicant authority and contact details of the office responsible;

(b) the name, address and any other data relevant to the identification of the addressee, insofar as available;

(c) the nature and subject of the document to be notified; and

(d) a short description of the claim concerned, including the amount if applicable.

2. Requests shall be made in writing, including electronically.

PUBLIC

3. The requested authority shall notify the document in accordance with its domestic law. Once notification has been executed, the requested authority shall inform the applicant authority of the date and manner of notification.

4. If notification cannot be executed, the requested authority shall promptly inform the applicant authority, indicating the reasons.

PUBLIC

CHAPTER 3

RECOVERY OR PRECAUTIONARY MEASURES

ARTICLE PVAT.18

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 territory of the Party 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 inform the requested authority.

ARTICLE PVAT.19

Conditions governing a request for recovery

1. The applicant authority may not make a request for recovery if and as long as the claim or the instrument permitting its enforcement are contested in the territory of the applicant authority.

2. Before making a request for recovery, the applicant authority shall first apply appropriate recovery procedures available in its own territory, except in the following situations:

(a) where it is obvious that there are no assets for recovery in the territory of that Party or that such procedures will not result in the payment of a substantial amount, and the applicant authority has specific information indicating that the person concerned has assets in the territory of the Party of the requested authority; or

(b) where recourse to such procedures in the territory of the Party of the applicant authority would give rise to disproportionate difficulty.

ARTICLE PVAT.20

Execution of the request for recovery

1. The requested authority shall recover the claim as if it were a claim of its own territory, making use of the powers and procedures provided under the laws, regulations or administrative provisions of that territory.

PUBLIC

2. The requested authority shall keep the applicant authority informed of the recovery steps taken and of the amounts recovered.

3. The requested authority may grant payment facilities or instalments in accordance with its law and may charge interest or recovery costs, which it may retain.

4. Amounts recovered shall be transferred to the applicant authority promptly after deduction of any costs or charges which the requested authority could not recover in accordance with Article PVAT.26(2).

PUBLIC

ARTICLE PVAT.21

Disputed claims and enforcement measures

1. Any dispute about the validity or amount of the claim shall be decided by the authorities of the applicant Party. Disputes about recovery actions taken in the requested Party shall be decided by its own competent bodies.

2. If the claim or enforcement instrument is contested, the requested authority shall suspend recovery for the disputed part until the decision becomes final, but the applicant authority may ask that recovery measures be continued or that precautionary measures be taken to secure the debt.

3. When recovery continues for a contested claim at the request of the applicant authority and the claim is later annulled or reduced, the applicant authority shall reimburse any amounts unduly recovered and any related costs or compensation.

4. Where necessary to prevent non-recovery due to fraud, disappearance of assets or insolvency, the requested authority may take precautionary measures allowed under its national law, prior to receiving a request from the applicant authority under paragraph 2.

PUBLIC

ARTICLE PVAT.22

Amendment or withdrawal of the request for recovery assistance

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.

ARTICLE PVAT.23

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 territory 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 territory of the applicant authority, in so far as precautionary measures are possible in a similar situation under the law and administrative practices of the territory of the applicant authority.

The document drawn up for permitting precautionary measures in the territory 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 territory of the requested authority. This document shall not be subject to any act of recognition, supplementing or replacement in the territory of the requested authority.

2. The request for precautionary measures may be accompanied by other documents relating to the claim.

PUBLIC

ARTICLE PVAT.24

Limits to the requested authority's obligation

1. The requested authority may refuse or limit assistance where:

(a) recovery would cause serious economic or social hardship in its territory;

(b) the administrative effort or cost would be clearly disproportionate to the amount to be recovered; or

(c) the claim is more than five years old, counting from its due date in the applicant Party.

2. In exceptional cases, assistance may still be provided up to ten years after the due date, if recovery remains legally possible in the applicant Party.

3. No assistance shall be requested for claims below GBP 5 000.

4. When assistance is refused or limited, the requested authority shall inform the applicant authority in writing and explain the reasons.

PUBLIC

ARTICLE PVAT.25

Questions on limitation

1. Time limits for establishing and recovering claims shall be determined by the law of the applicant Party.

2. Any request for recovery or precautionary measures pursuant to this Protocol shall have the effect of suspending the period of limitation until the requested authority has executed the request.

ARTICLE PVAT.26

Costs

1. Each Party shall bear the costs it incurs in recovery assistance and shall not seek reimbursement from the other Party.

2. The requested authority may recover its costs directly from the debtor in accordance with its law. The applicant authority shall reimburse the requested authority for costs or losses resulting from unfounded requests.

3. In exceptional cases involving unusually high costs, the authorities may agree specific reimbursement arrangements.

ANNEX 39

PUBLIC

PROTOCOL
ON THE TRACEABILITY, COOPERATION TO FIGHT SMUGGLING OF TOBACCO AND ADDITIONAL MEASURES RELATED TO TOBACCO PRODUCTS

ARTICLE PTOB.1

Information sharing

1. Without prejudice to compliance with other obligations by which they may be bound, the Union and the United Kingdom, in respect of Gibraltar, shall exchange regularly information concerning the amounts of tobacco products imported, sold or exported. This information shall include details relating to each of the following:

(a) the amount of raw or unmanufactured tobacco and tobacco products that have been imported into, sold in or exported from Gibraltar;

(b) for raw or unmanufactured tobacco: details of imports, specifying variety, origin, exporter, destination, importer, and weight in kilos;

(c) for tobacco products,

(i) distinction between the different types of tobacco products, such as: cigarettes, cigars, cigarillos, roll your own tobacco, pipe tobacco, waterpipe tobacco, oral tobacco, nasal tobacco, chewing tobacco and novel tobacco products, including heated tobacco products;

(ii) the volumes of the different types of tobacco products per brand and economic operator;

(iii) the trend in retail prices for each tobacco product type, indicating: the weighted average price for the amount sold, minimum price and maximum price;

(iv) as regards wholesale or retail, for each tobacco product type, distinction between direct retail sales and duty-free sales to leisure cruises or other forms of transport.

2. Additionally, the Union and the United Kingdom, in respect of Gibraltar, shall share specific information referring to the efforts made to prevent and combat fraud and smuggling in Gibraltar, including the legislation adopted for this purpose, the administrative and judicial measures applied, the human and material resources employed to prevent and combat fraud and smuggling, and the quantity and value of the seizures made. Such information shall also extend to the efforts, in terms of combatting illicit trade and fraud, of applying the content and rules regarding traceability.

3. The information referred to in this Article shall be provided quarterly and will be exchanged within the first two months of the quarter following the quarter being reported.

PUBLIC

ARTICLE PTOB.2

Cooperation and enforcement

1. The competent authorities within the Union and of the United Kingdom, in respect of Gibraltar, shall cooperate in identifying persons domiciled in their respective territories that, in proceedings undertaken in relation to smuggling of products originating in Gibraltar or destined for Gibraltar, may be found directly or indirectly responsible for such acts. The competent authorities shall also cooperate in investigations to determine the facts and attribution of responsibility.

2. This cooperation shall be reciprocal and shall include:

(a) assistance in serving the documents indicated by the requesting authorities, issued by the requesting authorities, to all the addressees thereof;

(b) provision, at the request of the requesting authorities, of all individual information concerning assets that is relevant to taxation, for the purpose of collecting debts owed to the authorities;

(c) collection, at the request of the requesting authorities, of debts owed to the authorities, as documented in an instrument that enables enforcement and authorises collection actions;

(d) at the request of the authorities, based on the instrument referred to in point (c), adoption of appropriate measures to ensure collection of the debts owed to the authorities.

PUBLIC

3. The appropriate measures set out in paragraph 2, point (d), may include any of the following:

(a) withholding any payments that the requested authority is due to make to the alleged debtor;

(b) measures providing for the freezing of assets of an alleged debtor;

(c) mechanisms or other measures prohibiting disposal, encumbrance or use of assets or exercise of rights having a monetary value;

(d) any other measure provided for by law.

4. Notwithstanding the implementation of the measures set out in this Protocol, should evidence emerge that tobacco products are being smuggled into Gibraltar or the surrounding area from any part of Spain in significant quantities, the competent authorities within the Union and of the United Kingdom, in respect of Gibraltar, shall take effective action to prevent such illicit activity.

5. Administrative arrangements between the competent authorities within the Union and of the United Kingdom, in respect of Gibraltar, shall set out the practical modalities for the application of this Protocol.

PUBLIC

ARTICLE PTOB.3

Tobacco traceability

PUBLIC

1. The United Kingdom, in respect of Gibraltar, shall apply a tobacco traceability system which is equivalent to the Union system, and covers:

(a) cigarettes and roll your own tobacco from the date of entry into force of this Agreement,

(b) all other tobacco products within a period of 24 months from the date of entry into force of this Agreement.

For the purposes of the tobacco traceability system, "manufacturer" means any natural or legal person who manufactures a tobacco product or has a tobacco product designed or manufactured, and markets that product under their name or trademark.

2. The competent authorities within the Union, in respect of the Spanish market, and of the United Kingdom, in respect of Gibraltar, shall provide each other, upon request, with any information collected by their respective systems. This information shall be provided in near-real time, and in any case no later than 24 hours from the receipt of the request. In exceptional circumstances, this period can be extended with the agreement of both Parties.

ARTICLE PTOB.4

Price differential

The price differential is laid down in Annex 6.

PUBLIC

ARTICLE PTOB.5

Additional measures

1. The United Kingdom, in respect of Gibraltar, shall establish the requirements with respect to picture warnings to be used on tobacco products that are equivalent to those applicable in the Union market.

2. The United Kingdom, in respect of Gibraltar, shall prohibit the placing on the market of tobacco for oral use.

3. The United Kingdom, in respect of Gibraltar, shall prohibit cross-border distance sales of tobacco products to consumers.

4. By the date of entry into force of this Agreement, the competent authorities of the United Kingdom, in respect of Gibraltar, shall have in place a system that ensures the destruction of tobacco products confiscated in operations against illicit trade and smuggling of tobacco products and of tobacco products that do not comply with the requirements of point (a) of Article 258 of this Agreement. Administrative arrangements between the United Kingdom, in respect of Gibraltar, and the Kingdom of Spain may set out the practical modalities for cooperation under this paragraph.

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PUBLIC

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 41(2) OF THIS AGREEMENT

Desiring to ensure a common interpretation, the Union and the United Kingdom, in respect of Gibraltar, 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 Contracting Party as an employee or as a service provider.

This category should not cover:

(a) businesspersons, i.e. persons travelling for the purpose of business deliberation (without being employed in the Union or the United Kingdom, in respect of Gibraltar);

(b) sportspersons or artists performing an activity on an ad-hoc basis;

(c) journalists sent by the media of their country of residence; and

(d) intra-corporate trainees.

The implementation of this Declaration shall be monitored by the Specialised Committee on the Circulation of Persons, which may propose modifications when, on the basis of the experiences of the Parties, it considers it necessary.

PUBLIC

JOINT POLITICAL DECLARATION
ON COUNTERING HARMFUL TAX REGIMES

The European Union[1] and the United Kingdom, in respect of Gibraltar (the "Participants") endorse the following Joint Political Declaration on Countering Harmful Tax Regimes.

The Participants, reflecting the global principles of fair tax competition, affirm their commitment to countering harmful tax regimes, in particular those that may facilitate base erosion and profit shifting in line with Action 5 of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan. In this context, the Participants affirm their commitment to applying the principles on countering harmful tax regimes in accordance with this Joint Political Declaration.

Harmful tax regimes cover business taxation regimes that affect or may affect in a significant way the location of business activity, including the location of groups of companies, within the Participants. Tax regimes include both laws or regulations and administrative practices.

If a tax regime meets the gateway criterion of imposing a significantly lower effective level of taxation than those levels which generally apply in the Participants, including zero taxation, it should be considered potentially harmful. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

[1] For the purposes of the commitments in this Declaration, with respect to the European Union, references to Participants are understood as being to the European Union, its Member States, or the European Union and its Member States, as the case may be.

In this context, and considering the approach set out at the global level, when assessing whether a business taxation regime is harmful, account should be taken of whether one or more of the following key factors apply:

(a) whether advantages are ring-fenced from the domestic economy so that they do not affect the national tax base or are accorded only to non-residents;

(b) whether the regime granting the advantages fails to require any substantial economic activity and substantial economic presence within the Participant offering such tax advantages;

(c) whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, in particular the rules agreed upon within the OECD;

(d) whether the tax regime lacks transparency, including where legal provisions are relaxed at administrative level in a non-transparent way or where there is no effective exchange of information with respect to the regime.

The Participants may hold an annual dialogue to discuss issues in relation to the application of these principles.

PUBLIC

ANNEX 42

PUBLIC

COMMISSION'S PROPOSED TEXT FOR A DECLARATION
ON SUPPLEMENTING GIBRALTAR'S ROAD TRANSPORT CONNECTIVITY

"The Parties recognise the benefits to the region {to be specified} of cross border connectivity for road transport, and the value of including Gibraltar in the United Kingdom's participation in the Protocol concerning the European Conference of Ministers of Transport (ECMT), the ECMT multilateral Quota, and the Interbus Agreement. The European Union will support the extension to Gibraltar of the Interbus Agreement once the conditions for such extension are met. The United Kingdom takes note of the letter from the European Commission referring to a Declaration of the Member States of the European Union that are Parties to the Protocol concerning the ECMT, made to the minutes of the Council of the European Union, by which these States express their intention to support the inclusion of Gibraltar in the United Kingdom's participation in the Protocol concerning the ECMT and the ECMT multilateral Quota."

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PUBLIC

UNITED KINGDOM DECLARATION
REGARDING A MIRROR AGREEMENT
BETWEEN THE SCHENGEN ASSOCIATES
AND THE UNITED KINGDOM

The Contracting 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 appropriate 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 matters relating to the circulation of persons covered by Part Two of the Agreement which affect the functioning of the area without controls at internal borders.