Council of the European Union

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PUBLIC

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Annex to the Council decision on the signing, on behalf of the Union, and on provisional application 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

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 THE AGREEMENT

Desiring to ensure a common interpretation, the Union and the United Kingdom, in respect of Gibraltar, agree that, for the purposes of the 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

PUBLIC

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

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."

PUBLIC

UNITED KINGDOM DECLARATION
REGARDING A MIRROR AGREEMENT
BETWEEN THE SCHENGEN ASSOCIATES
AND THE UNITED KINGDOM

PUBLIC

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.

JOINT DECLARATION OF THE EUROPEAN UNION AND THE UNITED KINGDOM RELATIVE TO ARTICLE 152(1) OF THE AGREEMENT

The Parties acknowledge that the mutual assistance provisions set out in Chapter 6 of Title V, Part II complement the relevant Council of Europe instruments, as listed in Article 152(1), only to the extent that those Council of Europe instruments are applicable to a Member State or the United Kingdom, in respect of Gibraltar. The Parties confirm their mutual understanding that references to those Council of Europe instruments do not make them applicable to a Member State or to the United Kingdom, in respect of Gibraltar, if they have not ratified those Council of Europe instruments.

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